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ALEX CAINE and CITY OF SAN PABLO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN J. BRACKO,

Plaintiff,

vs.

ALEX CAINE; CITY OF SAN PABLO;
and DOES 1-10, inclusive,

Defendants.

Case No. C08-00239 JL

**DECLARATION OF NOAH G.
BLECHMAN IN SUPPORT OF MOTION
TO COMPEL ANSWERS TO
DEPOSITION QUESTIONS AND
PRODUCTION OF DOCUMENTS**

Date: October 1, 2008
Time: 9:30 a.m.
Dept: Courtroom F, 15th Floor
Judge: Honorable James Larson

I, Noah G. Blechman, Esq., hereby declare:

1. I am an attorney at law duly licensed to practice before the courts of the State of California and this Court and am a partner at the law firm of McNamara, Dodge, Ney, Beatty, Slattery, Pfalzer, Borges & Brothers LLP; attorneys of record for Defendants ALEX CAINE and the CITY OF SAN PABLO. I have personal knowledge of each matter stated herein.
2. On August 1, 2008, I sent counsel for Plaintiff a letter, a true and correct copy of which is attached hereto as **Exhibit A**, regarding Plaintiff's refusal to answer certain deposition questions and to produce the witness statements of Ashlee Wilson and Lorraine Hunt, in a good faith attempt to resolve this discovery

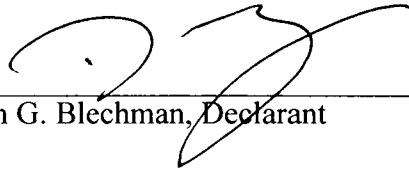
dispute. I was unable to resolve these disputes and advised counsel that I would be required to make a motion to compel if he did not offer up Plaintiff for further questioning at deposition and to produce Ms. Wilson and Ms. Hunt's witness statements.

3. Plaintiff's refusal to answer certain deposition questions and to produce witness statements were improper for the reasons set forth in the Memorandum of Points and Authorities in Support of Defendants' Motion to Compel, filed concurrently herewith.
4. On August 15, 2008, Plaintiff's counsel informed me via letter that Plaintiff would not submit to further deposition questioning or produce the relevant witness statements. A true and correct copy of this letter is attached hereto as **Exhibit B**.
5. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff's deposition transcript, pgs. 20-21; 57-63; 82-84; 86-97; 100-101; 105-106; 108-112; 134-135; 145-146; 156-166; 182 and 212.
6. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff's Second Amended Complaint ("SAC").
7. Attached hereto as **Exhibit E** is a true and correct copy of San Pablo Police Department Report Number 06-32432.
8. Attached hereto as **Exhibit F** is a true and correct copy of Plaintiff's Initial Disclosures.
9. Attached hereto as **Exhibit G** is a true and correct copy of the deposition transcript of Ashlee Wilson, pgs. 68-70 and 80.

I declare under penalty and perjury the foregoing is true and correct.

Executed this 21st day of August, 2008 at Walnut Creek, California.

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By: 
Noah G. Blechman, Declarant

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EXHIBIT A

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Re: Bracko v. City of San Pablo

Dear Mr. Phillips:

Pursuant to Federal Rule of Civil Procedure ("FRCP") 37(a)(2)(B) and Northern District of California Local Rule 37-1(a), Defendants write to confer in good faith regarding Plaintiff's improper refusal to answer several relevant, non-objectionable and non-privileged questions posed at his deposition.

Defendants hereby demand Plaintiff be produced forthwith to answer these questions, as discussed below, at a future deposition. If Plaintiff continues with his obstructionist tactics, Defendants will have no choice but to move to compel his answers. Please be advised Defendants will also seek appropriate sanctions for being forced to prepare such a motion and because you have no reasonable or legitimate bases for instructing Plaintiff to not answer these questions.

Additionally, Defendants demand that you produce written witness statements of Lorraine Hunt and Ashlee Wilson, which they admitted at deposition exist, which you wrongfully claim are privileged under the attorney work-product doctrine.

I. INTRODUCTION

On July 3, 2008, Defendants Alex Caine ("Caine") and City of San Pablo ("City") deposed Plaintiff, Christian Bracko ("Bracko"). During his deposition, Defendants asked Bracko several

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relevant and non-objectionable questions about his activities on the day he was arrested by Caine, and other relevant and non-objectionable questions. You instructed Bracko numerous times to not answer these questions, ostensibly because some of them allegedly asked Plaintiff questions regarding his criminal behavior, which you interpreted as potentially incriminating Plaintiff in violation of the Fifth Amendment to the Constitution of the United States.¹

As discussed below, your objections lacked merit and should you refuse to produce and allow Bracko to provide answers to these relevant and non-objectionable questions, Defendants will have no choice but to seek judicial intervention and an order compelling Bracko to answer, accompanied by a motion for appropriate sanctions.

The following are the relevant questions Defendants request Plaintiff submit to answering at a future deposition.

II. RELEVANT AND NON-OBJECTIONABLE QUESTIONS

A. Why did Bracko flee from Officer Brady?

Defense counsel asked Bracko a simple, straightforward question regarding why he fled from Officer Brady and the San Pablo Police Department. (Pl.'s Depo. pg. 58:12-16; *see also* pgs. 101, 104:22-105:5). This question is directly relevant to Bracko's activities before the chase began, what he possessed at the time Officer Brady attempted to pull him over, why Bracko was willing to endanger the public and Officer Brady by fleeing in his car, why he ran from Officer Brady after he had crashed his car, and why Bracko resisted arrest after Brady caught up with him.²

Clearly, why Bracko decided to flee from Officer Brady instead of complying with his attempt to pull him over is of consequence to this action as Plaintiff claims Caine used excessive force during his arrest. The reasons behind Bracko's choice to flee are directly relevant to his state of mind at the time and are also relevant to Caine's justification for using force to detain Plaintiff.

Instead of providing an answer to this relevant and unobjectionable question, you directed Bracko not to answer the question based on "something like" a Fifth Amendment privilege against self-incrimination. (Pl.'s Depo. pgs. 58:17-61:22).

¹ For ease of reference, the Fifth Amendment to the Constitution of the United States provides, in relevant part: "No person shall...be compelled in any criminal case to be a witness against himself..."

² *See* FRCP 403; " 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence."

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As you know, following Defendants' Motion to Dismiss Bracko's state law claims, which was granted by Judge Larson with prejudice, his sole surviving cause of action is an allegation of excessive force in violation of the Fourth Amendment to the Constitution of the United States. Because this lawsuit is now exclusively a "federal question" case, privileges are determined under federal common law. Federal Rule of Evidence ("FRE") 501; *United States v. Zolin*, 491 U.S. 554, 562 (1989).

Of course, the Fifth Amendment privilege against self-incrimination may be raised in civil as well as in criminal proceedings and applies during the discovery process. The Rutter Group, Cal. Prac. Guide, Fed. Civ. Pro. Before Trial, Chap. 11, § 700, citing *United States v. Balsys*, 524 U.S. 666, 672 (1998). However, "[t]he privilege can be waived by testifying on the subject matter at issue or by producing documents containing incriminating matters." The Rutter Group, Cal. Prac. Guide, Fed. Civ. Pro. Before Trial, Chap. 11, § 707, citing *Brown v. United States*, 356 U.S. 148, 156-157 (1958).

In this case, Bracko has already testified about the following "incriminating" matters:

- Bracko did not have a valid California Driver's License on the date of the incident nor has he ever had a valid license, yet he was pulled over by Officer Brady while driving. (Pl.'s Depo. pgs. 20:20-21:23);
- On the day of the incident, Officer Brady tried to pull Bracko over in Parchester Village in Richmond, California. Bracko fled by car and then on foot. After his car crashed or lost control, Bracko fled from the officer on foot. Bracko knew when he was fleeing from the officer that the officer was trying to stop him. (Pl.'s Depo. pgs. 57:21-59:15; *see also* Plaintiff's Second Amended Complaint ("SAC") pgs. 2:24-3:4);
- The car Bracko was driving on the day of the incident belonged to him. He did not have a driver's license at the time and the car was not legally registered. Brady therefore had grounds to stop Bracko because his vehicle was not registered. (Pl.'s Depo. pg. 96:11-97:3);
- Bracko stopped his car in the Parchester Community Center parking lot in Richmond after he saw Officer Brady attempt to pull him over. After he stopped, he pulled out, trying to flee from the officer. Bracko understood that when Brady was behind him with his lights on, he was trying to stop him. Bracko stopped his car briefly and then decided to flee by driving away. (Pl.'s Depo. pgs. 100:19-101:20);

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- After Bracko's car spun out during the car chase, he got out and ran. Bracko knows that when he decided to run, there was an officer behind him trying to stop him from fleeing. (Pl.'s Depo. pgs. 105:16-105:21);
- Up until the time Brady grabbed Bracko, Bracko heard the officer give him orders. Brady said "freeze" twice. Bracko ignored the commands. (Pl.'s Depo. pg. 108:1-108:17);
- After Bracko came out of his jacket, he ran back down Johnson. Bracko estimates he took a couple of steps after being pulled off the fence. (Pl.'s Depo. pgs. 109:9-110:21);
- Bracko then got up and started running again, trying to flee from the officer. (Pl.'s Depo. pgs. 110:22-111:19);
- Brady then hit Bracko again with a baton in his leg. He had taken a couple of more steps away from Brady trying to run. Bracko then fell into the street, laying on his stomach. (Pl.'s Depo. pgs. 111:20-112:14);
- After being on the ground several times, Bracko got up and tried to run away several times. Bracko heard Brady tell him to stay on the ground after Brady had a knee in his back. (Pl.'s Depo. pgs. 134:25-135:12);
- Bracko has been convicted of one (1) felony. He was convicted of a felony for evading the police. Bracko believes the conviction was for evading Brady. (Pl.'s Depo. pgs. 145:1-146:13);
- Bracko is aware that marijuana was found in the Nissan he was driving on the day of the incident. The marijuana was Bracko's. The officers also found marijuana in Bracko's jacket. That was also Bracko's marijuana. Bracko estimates they found approximately 76 to 77 grams of marijuana. (Pl.'s Depo. pgs. 156:3-157:8);
- All the marijuana found was Bracko's. (Pl.'s Depo. pgs. 157:9-158:4).

Clearly, by pleading in his SAC, and testifying extensively during his deposition that he fled in his car and then on foot from Officer Brady, Bracko has waived all Fifth Amendment

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privileges regarding why he did so.³ *Brown v. United States, supra*, at 156-157. Defendants' inquiries regarding this subject were clearly relevant to ascertaining Bracko's motive for fleeing from the police (*i.e.*, lack of registration or driver's license, possession of marijuana, fear of the police, etc.). Their questions were also relevant for purposes of establishing foundational facts to demonstrate Caine's state of mind when he arrived at the scene to assist Officer Brady in controlling Bracko.

You also instructed Plaintiff not to answer why he fled from the police on the basis that the involved officers may seek to charge Bracko with further crimes relating to this incident. (Pl.'s Depo. pg. 59:3-15). However, as you know, Bracko has already pled no contest to and been convicted of several charges relating to this incident, including a misdemeanor for resisting arrest under California Penal Code § 148(a)(1), and misdemeanors for evading the police in a motor vehicle under California Vehicle Code § 2800.1 and possession of marijuana in violation of California Health & Safety Code § 11357(c). Thus, Bracko is protected from being charged for evading and resisting the police or possession of marijuana under double jeopardy principles, as he has already been convicted and sentenced for these crimes.

Accordingly, unless you provide some valid basis for asserting that Bracko may be exposed to additional charges relating to this incident (which are likely barred by applicable criminal statutes of limitations), the reason why Bracko ran from the police is directly relevant and discoverable. Bracko should therefore answer questions relating to why he fled from Officer Brady.

B. Did Bracko Ingest any Illegal Substances on the Day of the Incident?

You also instructed Bracko not to answer whether he had taken any illegal substances on the day of the incident on the basis that the question called for Plaintiff to potentially incriminate himself in violation of the Fifth Amendment. (Pl.'s Depo. pgs. 81:14 – 84:2; 85:22 – 89:8; 90-91). Incredibly, you conceded that questions relating to Bracko's drug-use on the day in question were relevant to this case and that you "hoped" the judge would not sanction you for instructing Bracko not to answer. (Pl.'s Depo. pg. 87:7-18).

Again, because you concede the question is relevant to (1) Bracko's state of mind; (2) his ability to recall events accurately and completely, and; (3) his motive for fleeing from Officer Brady, the only question is whether, by answering these questions, Bracko could potentially

³ You also directed Bracko not to answer whether *one* of the reasons he fled from the police was he did not have a valid driver's license. (Pl.'s Depo. pgs. 61:23-62:4). Whether the fact that Bracko did not have a valid driver's license at the time of his arrest (he has already admitted he did not) is directly relevant to why he ran from the police and is non-privileged.

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“incriminate” himself, and you thus had an appropriate basis for instructing him not to answer.

As discussed in the previous section, the District Attorney is constitutionally forbidden from charging Bracko with possession of marijuana under double jeopardy principles. The statute of limitations relating to being under the influence of illegal narcotics is one year. California Penal Code (“PC”) § 802(a). Therefore, the final date Bracko could have been charged with ingesting illegal substances on the day at issue (November 27, 2006) was November 27, 2007 (approximately 8 months ago). Accordingly, there is no risk Bracko could “incriminate” himself by simply stating whether he was under the influence of a controlled substance on the date at issue. You thus had no valid or reasonably legitimate basis to instruct Bracko not to answer. Though Plaintiff later answered a question about drug use in the hours before the incident, the record is unclear and we wish to clear up this issue at the next deposition session.

C. Who was the Individual Bracko was with when he Decided to Flee from Officer Brady?

You next instructed Bracko not to answer questions regarding who he was traveling (and subsequently fled with) in his car when Officer Brady attempted to pull Bracko over on the grounds that the answer may be potentially incriminating. (Pl.’s Depo. pgs. 90:19-91:1; 91:23-95:10). This was yet another invalid and unreasonable objection and Bracko should answer this simple, straightforward question. Plaintiff’s objection here is clearly improper and obstructionist.

As discussed above, this case now exclusively involves a “federal question”, and therefore privileges are determined under federal common law. FRE 501; *United States v. Zolin*, *supra*, 491 U.S. 554, 562 (1989). Here, the law is clear that the Fifth Amendment privilege against self-incrimination only applies to Bracko, not his passenger. Under clear and longstanding United States Supreme Court precedent, the privilege against self-incrimination “is solely for the benefit of the witness” and is “purely a personal privilege of the witness.” *Rogers v. United States*, 367 U.S. 367, 371 (1951); citing *United States v. Murdock*, 284 U.S. 141, 148 (1931) and *Hale v. Henkel*, 201 U.S. 43, 69 (1906).

Because the privilege against self-incrimination belongs to Bracko alone, he cannot invoke the privilege on behalf of his passenger. Identification of this passenger could lead to discovery of admissible evidence and should be disclosed. The passenger may have seen the altercation and/or can shed further light on this incident. There is no foundational basis for this objection.

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Bracko should accordingly identify who his passenger was when he decided to flee from Officer Caine at a future deposition.

D. What is Bracko's Personal History of Marijuana Use and What were the Circumstances under which Bracko was Found with a Significant Amount of Marijuana?

1. What is Bracko's Personal History of Using Marijuana?

You instructed Bracko not to answer questions relating to his personal history of using marijuana, again on the grounds that it purportedly calls for Bracko to be a witness against himself in violation of the Fifth Amendment as well as being irrelevant. (Pl.'s Depo. 157:25-159:14).

The police report describing this incident indicates Bracko told Officer Brady that the approximately seventy-seven (77) grams of marijuana found in his car and on his person was for "personal use". Photographs taken of Bracko's possessions following his arrest also support the fact that Bracko was found with a significant amount of marijuana. The amount of marijuana found on Bracko is obviously inconsistent with personal use. Since Bracko claims all the marijuana found at the scene (1) admittedly belonged to him; (2) was for personal use, and (3) was actually his mother's for medicinal purposes, Bracko's personal history of marijuana use is relevant to his truthfulness and motive for fleeing from and struggling with Officers Brady and Caine.

Similarly to the discussion above relating to whether Bracko had ingested any illegal narcotics on the date in question, Bracko has already been prosecuted for and pled no contest to a misdemeanor for possession of marijuana. Subsequent prosecution for this crime is therefore barred by principles of double jeopardy. Also, there can be no concern that Plaintiff will be prosecuted for admissions as to past drug abuse.

Again, the District Attorney is currently prohibited from prosecuting Bracko for being under the influence of marijuana before August 1, 2007 under applicable statutes of limitation. Given the significant amount of marijuana found during his arrest and detention, and the dispute as to whether Bracko told Officer Brady that the marijuana was for personal use, questions relating to Bracko's personal history of using marijuana are directly relevant to (1) his state of mind at the time of the incident; (2) whether he can accurately and completely recall the events leading up to his arrest, and; (3) his motive for fleeing from the officers. Bracko therefore should answer questions relating to his personal history of using marijuana.

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2. Where did Bracko Obtain the Marijuana he was Found with?

You did not allow Bracko to answer questions regarding where he obtained the significant amount of marijuana that was found on his person and car. (Pl.'s Depo. pg. 159:16-159:24). Again, you based this objection on the grounds that an answer to this question would be self-incriminatory. Your objection had no reasonable or legitimate basis.

As discussed at length above, the District Attorney is prohibited from prosecuting Bracko for possession of marijuana on the date of the incident based on double jeopardy principles. He can therefore have no reasonable basis for fear of prosecution relating to possession of marijuana on the day of the incident.

Where Bracko obtained the marijuana is directly relevant to (1) who the marijuana was intended for; (2) whether the marijuana was for personal use or sale, and (3) Bracko's credibility and truthfulness. Since there is a dispute between the parties as to whether (1) Bracko told Officer Brady whether the marijuana was for personal use and (2) whether a jury could infer that Bracko fled from the police because he possessed a significant amount of marijuana and accordingly feared prosecution for possession for sale, where Bracko obtained the marijuana is directly relevant to that dispute.

3. Why does Bracko no Longer Possess a Cannabis Card?

Bracko stated in his deposition that he (1) obtained a valid cannabis card and held it from 2000 to 2007 as a caregiver to his mother in order to provide her with medicinal marijuana; (2) the marijuana he obtained with the cannabis card was always provided to his mother; (3) he never used the card for his own purposes; (4) he obtained the marijuana found on him by Officers Brady and Caine from the Hilltop Cannabis Club in Richmond, California, on the day of the incident, and; (5) he intended to provide the marijuana he obtained from the Hilltop Cannabis Club on the day of the incident to his mother. (Pl.'s Depo. pgs. 159:25-162:15)

You did not allow Bracko to answer why his caretaker cannabis card was cancelled in 2007 on the grounds that the answer might incriminate him. (Pl.'s Depo. pgs. 162:18-164:2). Questions relating to why Bracko's cannabis card was cancelled could be directly relevant to, among other issues, the actions taken by various California state agencies following Bracko's arrest for and conviction of marijuana possession. If a state agency determined that Bracko was unlawfully using his caretaker cannabis card by not providing the marijuana he obtained from various cannabis clubs to his mother for medicinal purposes, that fact would be directly relevant to Bracko's motive for fleeing from the police and subsequently resisting arrest. Defendants are therefore entitled to question Bracko about why his caretaker cannabis card was cancelled.

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4. Where did Bracko Obtain \$600 to buy the Marijuana he was Found with?

You refused to allow Bracko to provide information about where he obtained approximately \$600 in order to buy the marijuana he was found with after Officers Caine and Brady arrested him. (Pl.'s Depo. pgs. 164:3-165:5). Clearly, such information is relevant to ascertaining Bracko's motive in possessing the marijuana (*i.e.* was it for personal use, for sale, or for his mother?). It is also relevant because Bracko admitted he has only held one job since graduating from high school in 2000, and that employment terminated in December, 2004. Where Bracko obtained \$600 to purchase marijuana given his lack of employment and corresponding limited funds at the time of the incident is obviously relevant to Bracko's motive for fleeing from and resisting the police.

As discussed above, the statute of limitations for possession of marijuana for sale forecloses the possibility of Bracko's prosecution for such a crime. Finally, the District Attorney cannot constitutionally prosecute Bracko for possession of marijuana for sale due to double jeopardy principles. Accordingly, Bracko should identify the source from which he obtained \$600 to purchase the marijuana he was found in possession of.

5. Does Bracko Remember Receiving a Text-Message Regarding a Request for Marijuana?

Finally, you instructed Bracko not to answer a question regarding whether he remembers receiving a text-message from an unidentified caller stating "Call me fool. I need sum (sic) weed." (Pl.'s Depo. pg. 211:5-24). Your objection was that the question called for Bracko to potentially incriminate himself in violation of the Fifth Amendment.

This question is clearly relevant to understanding Bracko's motive for fleeing from and resisting Officer Brady. If Bracko remembers receiving a text-message requesting marijuana before the day of the incident, that fact indicates Bracko may indeed be a known marijuana seller and the marijuana in his possession was in fact for sale. Of course, this may also explain why Bracko so forcefully attempted to avoid being arrested on the date in question.

As discussed extensively above, the District Attorney is constitutionally prohibited from charging Bracko with possession of marijuana for sale on the date of the incident under double jeopardy principles. The District Attorney is also precluded from charging Bracko with the same crime because the applicable statute of limitations period has run. Bracko should accordingly answer whether or not he remembers receiving a text-message requesting marijuana.

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III. WITNESS STATEMENTS OF LORRAINE HUNT AND ASHLEE WILSON

A. The Written Witness Statements of Lorraine Hunt and Ashlee Wilson are not Protected by the Attorney Work-Product Doctrine.

At the depositions of Ms. Hunt and Ms. Wilson, they both testified that you obtain a written factual statement of incident from them (different than Ms. Hunt's prior handwritten statement) which they gave to you and you gave them each a copy. These statements are discoverable and should have been produced pursuant to Plaintiff's duty of disclosure under FRCP 26. As discussed above, this case now exclusively involves a "federal question", and privileges are therefore determined under federal law. FRE 501; *United States v. Zolin, supra*, 491 U.S. 554, 562 (1989). The work-product doctrine protects trial preparation materials that reveal an attorney's strategies, intended lines of proof, evaluation of strengths and weaknesses, and inferences drawn from interviews. *The Rutter Group*, Cal. Prac. Guide, Fed. Civ. Pro. Before Trial, Chap. 11, § 825, citing FRCP 26(b)(3); see also *Hickman v. Taylor*, 329 U.S. 495, 511 (1947). However, the work-product doctrine does *not* protect documents or reports prepared by independent witnesses. *The Rutter Group*, Cal. Prac. Guide, Fed. Civ. Pro. Before Trial, Chap. 11, § 865.

Because Ms. Hunt and Ms. Wilson are (purportedly) independent witnesses, their factual statements, whether or not prepared by you, are relevant and not protected by the attorney work-product doctrine. These statements should have been identified in Bracko's Initial Disclosures and also produced herein. Defendants accordingly demand that you produce these statements immediately.

Alternatively, FRCP 26(b)(3) provides that an opposing party is entitled to documents that would otherwise be protected under the work-product doctrine if it can show (1) a substantial need; and (2) is unable without undue hardship to obtain the substantial equivalent of the materials by some other means. Because these statements could corroborate or contradict Ms. Hunt and Mr. Wilson's account of the incident as they testified in deposition, these statements are relevant, are needed by Defendants and we cannot obtain them through the witnesses as they are homeless and do not know where the statements are. They could also provide evidence favorable to Plaintiff which Defendants want to explore.

Because these statements are in your exclusive possession, and you have refused to produce them or disclose their contents, Defendants cannot obtain the information contained in these statements by some other means. Accordingly, should you refuse to produce these statements, Defendants will have no choice but to seek an order compelling disclosure. At a minimum, to be able to fully evaluate Plaintiff's objections to disclosure, Plaintiff should provide a privilege log as mandated by FRCP 26.

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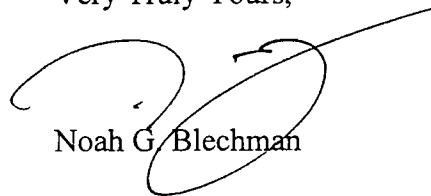
IV. CONCLUSION

Your objections to Defendants' simple, straightforward and non-objectionable questions were not well-taken and had no legitimate or reasonable bases in law or fact. Bracko should answer the questions and related areas as discussed above. If you refuse to offer up and allow Bracko to answer these questions, Defendants will move for an order compelling him to do so. Defendants will also seek, by August 15, 2008, appropriate sanctions for being forced to prepare the motion to compel to respond to Plaintiff's unjustified positions and meritless objections.

The statements of Ms. Hunt and Ms. Wilson are likewise not privileged. Defendants accordingly demand you produce these statements. If you do not, Defendants will seek an order compelling you to produce such statements by August 15, 2008.

Should you have any questions, please do not hesitate to contact the undersigned, or James V. Fitzgerald, III, the lead trial attorney on this matter.

Very Truly Yours,



Noah G. Blechman

EXHIBIT B

LAW OFFICE *of* MISTER PHILLIPS

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Pinole, CA 94564
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8/14/08

Noah Blechman, Esq.
McNamara Dodge
P.O. Box 5288
Walnut Creek, CA 94596

Re: Bracko v. Caine

Dear Mr. Blechman:

After reflecting on the deposition of Christian Bracko, including the questions you asked and the police officers who were present and taking notes, I am convinced that Defendants are using the deposition to conduct an investigation into alleged illegal drug sales. This is an abuse of the discovery process. This is also annoying, embarrassing, and/or oppressive to Bracko. Therefore, Bracko objects to further questioning and plans to seek a protective order.

Furthermore, Bracko specifically objects to the following questions on the grounds stated below.

Why did Bracko flee?

First, Bracko asserts his right against self-incrimination. Bracko's testimony could lead to his criminal prosecution for other more serious crimes.

Second, why Bracko fled is not relevant, because it does not have any tendency to make *the sole issue in this case: whether Defendant used excessive force on Bracko*, more probable or less probable, especially since Defendant did know why Bracko fled.¹

¹ Although *why* Bracko fled is not relevant, *whether* Bracko fled is. See Ninth Circuit Model Civil Jury Instruction 9.22(3).

Did Bracko use illegal drugs on the day of the incident?

As Defendants stated on page six of their meet and confer letter, Bracko already answered this question.

Who was with Bracko?

First, Bracko asserts his privilege against self-incrimination. The individual's testimony could lead to the criminal prosecution of Bracko for other more serious crimes.

Second, Bracko objects on the ground that identifying the individual to the police could place Bracko in grave danger.

What is Bracko's history of alleged drug use?

First, Bracko asserts his right against self-incrimination. Bracko's testimony could be used against him in future criminal proceedings.

Second, Bracko objects on the ground that the question is unreasonably annoying, embarrassing, and/or oppressive.

Third, Bracko's history of alleged drug use is not relevant, because it does not have any tendency to make Defendant's use of unreasonable force more probable or less probable.

Where did Bracko get marijuana?

First, Bracko asserts his right against self-incrimination. Bracko's testimony could lead to his criminal prosecution for other more serious crimes.

Second, according to page eight of Defendants' meet and confer letter, Bracko already answered this question. "Bracko stated in his deposition that ... he obtained the marijuana found on him by Officers Brady and Caine from the Hilltop Cannabis Club in Richmond, California"

Third, where Bracko got marijuana is not relevant, because it does not have any tendency to make Defendant's use of unreasonable force more probable or less probable.

Why does Bracko no longer have a cannabis card?

First, Bracko asserts his right against self-incrimination. Bracko's testimony could lead to his criminal prosecution for other more serious crimes.

Second, why Bracko no longer has a cannabis card is not relevant, because it does not have any tendency to make Defendant's use of unreasonable force more probable or less probable.

Where did Bracko get money to buy marijuana?

First, Bracko asserts his right against self-incrimination. Bracko's testimony could lead to his criminal prosecution for other more serious crimes.

Second, where Bracko got money to buy marijuana is not relevant, because it does not have any tendency to make Defendant's use of unreasonable force more probable or less probable.

Does Bracko remember receiving a request for marijuana?

First, Bracko asserts his privilege against self-incrimination. Bracko's testimony could lead to his criminal prosecution for other more serious crimes.

Second, whether Bracko remembers receiving a request for marijuana is not relevant, because it does not have any tendency to make Defendant's use of unreasonable force more probable or less probable.

Witness statements I took

First, the witness statements I took are my protected work-product.

Second, the exception to the work-product doctrine does not apply, because Defendants have already obtained "the substantial equivalent" of the witness statements by deposing the witnesses.

If you have any questions about Bracko's position, please call me.

Cordially,

Mister Phillips, Esq.

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

--oOo--

COPY

CHRISTIAN J. BRACKO,

Plaintiff,

vs.

No. C08-00239

ALEX CAINE; CITY OF SAN PABLO, CA;

and DOES 1 - 10, inclusive

Defendants.

DEPOSITION OF CHRISTIAN J. BRACKO

Taken before JULIE MAGGI VASTA,
A Certified Shorthand Reporter,
License No. C-2947, State of California

July 3, 2008

McNair, Dodge, Ney, Beatty,
Slattery & Pfalzer LLP

--oOo--

JUL 17 2008

HAND DELIVERED

1 may affect his emotional state, I think I am entitled to
2 inquire into that stuff.

3 MR. PHILLIPS: Go ahead.

4 MR. BLECHMAN:

5 Q. So you can answer my last question I asked you
6 about just what was the nature of the issues between
7 you and Athena going on around the time of the
8 incident?

9 A. Found girls' numbers in my phone.

10 Q. Okay. And she thought that you were maybe
11 fooling around a little bit on the side?

12 A. Yes.

13 Q. Do you have any children?

14 A. No.

15 Q. Ever been married?

16 A. No.

17 Q. After a couple of weeks after this incident is
18 that when you and Athena got back together?

19 A. Yes.

20 Q. Do you currently have a driver's license?

21 A. No.

22 Q. Have you ever had a driver's license?

23 A. No.

24 MR. PHILLIPS: Can I speak to him for a second,
25 please.

1 MR. BLECHMAN: Sure.

2 (Mr. Phillips and the witness leave the room.)

3 MR. BLECHMAN:

4 Q. Mr. Bracko and his attorney are back from a
5 brief meeting.

6 And the last question I asked you, and I will just
7 reask it is, have you ever had a driver's license?

8 A. No, I never had a driver's license. They
9 suspended them and I never had one.

10 Q. Have you ever, like when you were 16 or
11 whatnot, did you ever take the test to get a driver's
12 license?

13 A. Yes. I took the test and failed.

14 Q. Okay. And let me ask you this: Have you ever
15 taken the driver's license test and passed and received
16 a driver's license from the DMV?

17 A. Never received a driver's license.

18 Q. So you have never had a valid California
19 Driver's License?

20 A. No. Just an ID.

21 Q. Okay. You had a California Identification
22 Card?

23 A. That's it.

24 Q. One thing I was confused about, at the time of
25 this incident, and we are going to get into this in a

1 perspective and your attorney's perspective --

2 A. Some --

3 Q. Hold on -- - in relation to this incident?

4 A. Yes. Some of the stuff in here I told him what
5 happened, but I don't recall.

6 MR. PHILLIPS: Okay. I don't want you to say
7 anything about what you told me or anything like that,
8 but just answer his question and stop talking.

9 THE WITNESS: Could you repeat the question.

10 MR. BLECHMAN:

11 Q. We're looking at the Complaint that was filed
12 on your behalf to initiate this lawsuit.

13 And my question was have you ever seen this
14 document before today or any similar type of document.
15 There's been a couple of amendments to your Complaint
16 but nothing substantive in terms of the facts for the
17 most part.

18 Have you ever seen any complaint filed on your
19 behalf in this case before today?

20 A. No.

21 Q. While we're looking at the Complaint here, have
22 you read the facts section which is starting on page
23 two, line 23, through page three, line 28? Have you
24 read those paragraphs? It's essentially paragraphs 8
25 through 15.

1 A. Can you say that again for me.

2 Q. Sure. I just want to make sure that I give you
3 an opportunity to read these paragraphs because I am
4 going to ask you questions about them right now.

5 So I was wondering if you read those paragraphs
6 starting on page two, it's actually paragraph number
7 eight through page three, paragraph number 15.

8 A. Can you break that question down for me.

9 Q. Yes. Have you had a chance to kind of read
10 through pages two and three here, the facts section of
11 the complaint?

12 A. Yes. Right now.

13 Q. Okay. Let me draw your attention then to page
14 two on there, the paragraph listed number eight that
15 starts on November 27, 2006.

16 I will just take this paragraph by paragraph and
17 then I'll ask you questions about it. Okay?

18 A. All right.

19 Q. Is there anything in that paragraph that in
20 your opinion is inaccurate?

21 And just for the record, I will read what the
22 paragraph says. It says, on November 27th, 2006, around
23 noon an unknown San Pablo, California, police officer
24 tried to pull Mr. Bracko over in Parchester Village, a
25 predominantly black neighborhood in Richmond,

1 California.

2 Mr. Bracko fled by car and then on foot in the same
3 neighborhood.

4 Is that all correct?

5 A. Yes.

6 Q. So it's true that you fled from the police
7 officer in your car, correct?

8 A. Yes.

9 Q. And then after your car crashed or lost
10 control, you fled from the officer on foot, correct?

11 A. Yes.

12 Q. When you were driving your car and fleeing from
13 the officer, you knew that there was an officer behind
14 you that was trying to stop you, correct?

15 A. Yes.

16 Q. Now, why was it that you were fleeing?

17 MR. PHILLIPS: Do not answer that.

18 MR. BLECHMAN: I think it's a fair question.

19 THE WITNESS: I am going to abide by --

20 MR. PHILLIPS: Don't. Just don't answer it.

21 It's an unfair question. Don't answer it. It has
22 nothing to do with the case and just don't answer the
23 question.

24 MR. BLECHMAN: It's directly relevant to issues in
25 this case, so I don't understand your objection. Other

1 than asking your client not to answer the question, you
2 know, what's your legal objection?

3 MR. PHILLIPS: This case has a bunch of criminal
4 elements floating around it, which you know. You have
5 two police officers who are sitting over there taking
6 notes and writing down phone numbers of the people he's
7 talking about. So they are going to do whatever they're
8 going to do when they leave here. And the bottom line
9 is I don't want anybody putting my client in jail
10 because he sued the police department. And I am not
11 saying because he sued the police department, but
12 because he came in here and said a whole bunch of stuff
13 that he had no business saying and he ends up in jail
14 because he brought a civil suit.

15 So don't answer the question.

16 MR. BLECHMAN: Hold on. What's your legal
17 objection? Are you trying to make a 5th Amendment --

18 MR. PHILLIPS: Something like that.

19 MR. BLECHMAN: -- incrimination objection?

20 MR. PHILLIPS: Yes. To the extent that you're
21 asking him incriminating questions or potentially
22 incriminating questions in here, I have instructed him
23 already not to answer the question.

24 MR. BLECHMAN: Wow. First of all, he has already
25 -- as far as I am aware, he's already been charged and

1 convicted of crimes arising out of this incident. So I
2 don't believe there is any 5th Amendment rights to
3 assert here in terms of self incrimination.

4 I am entitled to find out why -- what his intent
5 was and why he was fleeing. That's directly relevant to
6 the issues in this case.

7 If you're going to instruct him not to answer the
8 question, that's your prerogative. I am going to mark
9 that portion of the transcript and chances are we are
10 going to have to bring him back to answer those type of
11 questions.

12 I mean, it's a fair question in a case involving a
13 fleeing suspect and then followed by a struggle. So
14 that's my position.

15 MR. PHILLIPS: I understand. But to the extent
16 that the question is potentially incriminating, he's not
17 going to answer that today. But outside of that, ask
18 away.

19 MR. BLECHMAN: So as to why he was fleeing from the
20 officers, you're not going to allow him to answer this
21 question?

22 MR. PHILLIPS: I have instructed him not to answer
23 that question.

24 MR. BLECHMAN: Based upon 5th Amendment
25 self-incrimination grounds?

1 MR. PHILLIPS: There is no reason to keep repeating
2 it, Noah. He's not answering the question. I told you
3 why.

4 MR. BLECHMAN: I am trying to make a record here,
5 Mister, so I am clear on your objection in case I need
6 to challenge it and do a motion or whatnot to bring him
7 back to ask what is a fair question for essentially
8 things he's kalready been convicted for. So I don't
9 think there's any 5th Amendment rights there.

10 MR. PHILLIPS: You know, he was convicted of
11 certain things. There were other things that he was not
12 convicted of, okay, and I don't want him to be convicted
13 of the other things.

14 So the question's potentially incriminating, and
15 he's not answering it, and I think she's got it for the
16 record. And that's why he's not answering it.

17 MR. BLECHMAN: I am going to ask the court reporter
18 to mark that portion of the transcript then.

19 Q. I may have to bring you another day to ask you
20 some of the questions that your attorney is not allowing
21 you to answer now. Okay?

22 A. Okay.

23 Q. Let me ask it this way: Is one of the reasons
24 that you fled the fact that you did not have a driver's
25 license?

1 MR. PHILLIPS: Objection. Don't answer the
2 question.

3 It's the same objection. You can ask the question
4 50 different ways. He's not answering the question.

5 MR. BLECHMAN: Well, we'll get to that stuff. I
6 think there is some discoverability on some of those
7 issues, so we'll get to that.

8 Q. Let's move to paragraph nine. I am going to
9 read you paragraph nine, and I want you to read it to
10 yourself, and then I am going to ask you a couple
11 questions about it.

12 Paragraph nine in the Complaint says, "The officer
13 caught Mr. Bracko, wrestled him onto his stomach, and
14 handcuffed his hands behind his back."

15 Is that accurate?

16 A. Yes.

17 Q. Okay. And then that paragraph says,
18 "Mr. Bracko's head was on the sidewalk, his body was in
19 the street."

20 Is that accurate so far?

21 A. Yes.

22 Q. And then it says, "Mr. Bracko was under full
23 control."

24 Is that accurate?

25 A. Yes.

1 THE WITNESS: Yes.

2 No.

3 MR. PHILLIPS: Okay.

4 MR. BLECHMAN:

5 Q. So a minute ago when I asked you if you missed
6 any time from work and you said yes, were you confused
7 about that question?

8 A. Yeah.

9 Q. Okay. So you're not claiming any missed time
10 from work as a result of this incident, correct?

11 A. No.

12 Q. What I said was correct?

13 A. Yes.

14 Q. Okay. Why don't we -- a couple more questions
15 and then maybe we'll take a break for lunch. Does that
16 work?

17 We are talking about the incident, so let's back up
18 a little bit, okay.

19 On the night of the -- or the day of the incident,
20 what had you been doing earlier in that day?

21 A. At a friend's house.

22 Q. And what were you doing at the friend's
23 house?

24 A. Lounging.

25 Q. Had you been taking any drugs or anything at

1 your friend's house?

2 MR. PHILLIPS: Objection. Don't answer that
3 question. Incriminating.

4 MR. BLECHMAN: Well, I am certainly entitled to
5 know whether or not your client was under the influence
6 of any drugs or alcohol or anything like that at the
7 time of the incident which certainly may have a bearing
8 on his recollection and testimony and whatnot.

9 So if you're instructing him not to answer, that's
10 fine. That's certainly going to be part of a motion to
11 compel.

12 And if I have to come back, Counsel, I am going to
13 seek sanctions for some of these objections that I don't
14 think are well taken.

15 MR. PHILLIPS: Well, on this one when you just said
16 it the question changed a little bit.

17 I agree if he was drinking alcohol or something
18 like that, maybe he was impaired. If you were to ask
19 him maybe if he was on prescription drugs, that's okay.
20 But there are a lot of other things floating around this
21 question.

22 If you want to ask him if he was on illegal drugs,
23 I am going to tell him not to answer that question every
24 minute of the day.

25 So if you want to be more specific, I probably

1 won't object. It was a very vague question. It was
2 open to many different things.

3 MR. BLECHMAN: Right. It was a broad question so I
4 would whittle it down to specifics.

5 Q. But I am certainly entitled to this
6 information. So let me ask you this question again and
7 I can break it down if we need to do that.

8 Q. You're at your friend's house and, first of
9 all, who's your friend? Whose house was it?

10 A. Adante. Adante Dotson.

11 Q. Is it Adante?

12 A. Adante.

13 Q. Adante. And what's Adante's last name?

14 A. Dotson.

15 Q. D-o-t-s-o-n?

16 A. Yes.

17 Q. And where does he live?

18 A. He stays in Vallejo.

19 Q. Do you know his address?

20 A. No.

21 Q. Do you know his phone?

22 A. 510-827-5696.

23 Q. 5696?

24 A. Yes.

25 Q. All right. Who else was there with you and

1 A. Yes.

2 Q. Okay. And where did you go from that house?

3 A. To Parchester.

4 Q. So you were driving from Vallejo to Richmond?

5 A. No. I was driving from San Pablo to Richmond.

6 Q. I thought Adante lived in Vallejo?

7 A. He's staying in Vallejo now. He stayed in San
8 Pablo at the time.

9 Q. Gotcha. So you were in San Pablo at Adante's
10 house?

11 A. Yes.

12 Q. Where was Adante's house in San Pablo? Do you
13 remember the address?

14 A. I don't know the address.

15 Q. From the area of where this incident occurred
16 to Adante's house, how far away was it?

17 A. Not that far.

18 Q. Pretty close?

19 A. Yeah.

20 Q. Yes?

21 A. Yes.

22 Q. Now, at Adante's house did you ingest any
23 prescription medication?

24 A. No.

25 Q. Did you take -- did you ingest any illegal

1 drugs such as marijuana, cocaine, crack?

2 MR. PHILLIPS: Objection.

3 Do not answer that question.

4 MR. BLECHMAN: Hold on. Hold on.

5 Methamphetamines, anything like that?

6 MR. PHILLIPS: Objection.

7 Do not answer that question.

8 MR. BLECHMAN: What's the basis of your objection,
9 Counsel?

10 MR. PHILLIPS: It's potentially incriminating.

11 MR. BLECHMAN: You're afraid your client's going to
12 be prosecuted for admitting that he was taking drugs at
13 the time before this incident?

14 MR. PHILLIPS: No comment. But the question that
15 you're asking him is an incriminating question and he's
16 not going to answer that.

17 MR. BLECHMAN: It's certainly a fair question. I
18 don't have to ask these questions but for the fact that
19 your client, Mr. Bracko, is suing my officers in
20 relation to this incident.

21 This information is directly relevant to your
22 client's recollection of events, his ability to recall
23 events, his state of mind at the time of the incident,
24 those type of things.

25 So if you're going to instruct him not to answer

1 the question, I can assure you that that's going to be a
2 subject of a motion to compel. I am going to seek
3 sanctions for what I think is an unsubstantiated
4 objection to a fair question.

5 So, you know, I ask you to reconsider your position
6 in that sense.

7 MR. PHILLIPS: If we were in front of the judge
8 right now I would agree that it's a relevant question
9 for the reasons that you stated, and I don't disagree
10 with that.

11 But I don't think -- I would hope that the judge
12 will not sanction me because I told my client not to
13 answer whether he was smoking crack in a deposition
14 under oath. I would hope that the judge would not
15 sanction me for that. Maybe he would, I would hope that
16 he wouldn't.

17 But I am instructing my client not to answer this
18 question.

19 MR. BLECHMAN: Now, I am not asking him if he
20 smoked crack a week ago or, you know, took
21 methamphetamines, you know, five years ago.

22 I am asking specifically about if he was doing any
23 drugs the day of incident, the time right before the
24 incident, which is certainly relevant and a fair
25 question.

1 MR. PHILLIPS: Noah, I already said that I don't
2 dispute that's it's a relevant question. You can tell
3 me 50 times that it's relevant, and I will say 50 times
4 I agree.

5 But I will say to you 50 times that it's an
6 incriminating question and he will not be answering that
7 question.

8 MR. BLECHMAN: Okay. Well, we are also going to
9 also mark that portion of the transcript. I am going to
10 seek a motion I guess on this. I am going to seek
11 sanctions for having to spend the time to do the motion
12 for information that Counsel has even conceded is
13 relevant.

14 There are some facts that Mr. Bracko, in my opinion
15 and information, that he has waived by bringing suit in
16 this case, one of which is things he was doing leading
17 up to this incident, et cetera, et cetera.

18 So I am going to reserve my right to bring him back
19 for further questioning once we sort out that issue.
20 Obviously with the E&E in this case set up for
21 July 21st, it's not going to be an issue that we can
22 probably resolve before then.

23 So, you know, it is what it is. We'll have to
24 bring a motion at that point to ask those questions.

25 Just so I am making my record correctly here,

1 you're not going to allow me to -- well, I will ask my
2 question and you can make your objection.

3 Q. Just so the record's clear, while you were at
4 Adante's house just prior to this incident, had you
5 ingested any illegal drugs such as marijuana, crack,
6 cocaine, methamphetamines, anything like that?

7 MR. PHILLIPS: Objection. Incriminating.

8 Do not answer that question.

9 MR. BLECHMAN: Okay. And my prior certification is
10 the same certification for that question.

11 Q. Had you drank any alcohol or anything like that
12 at Adante's house?

13 A. No.

14 MR. BLECHMAN: This might be a good time to break
15 for lunch before we get into more headbutting.

16 We'll take a quick lunch break.

17 (Lunch recess taken.)

18 MR. BLECHMAN: We're back from a brief lunch
19 break.

20 I have met and conferred off the record with
21 Mr. Phillips. He's still taking the same position with
22 regard to instructing his client not to answer any
23 questions about whether or not he had taken any drugs
24 just prior to the incident, and I want to ask a
25 follow-up question regarding that subject to Counsel's

1 objection.

2 Q. One thing I wanted to ask you, Mr. Bracko, was
3 I asked you earlier if you had taken any drugs at
4 Adante's house or whatnot.

5 Let me ask you a more broad question, and your
6 Counsel may object.

7 At the time you got pulled over was approximately
8 -- or the time they intended to stop you was about noon
9 or 12:45 in the daytime; is that your memory?

10 A. Yes.

11 Q. Okay. Had you taken any illegal drugs that
12 day, and I am talking about November 27th, 2006, had you
13 taken any illegal drugs that day?

14 MR. PHILLIPS: Objection. Incriminating.

15 Don't answer that.

16 MR. BLECHMAN: Okay. I am going to reserve my same
17 objections to the objection and that's going to be
18 probably an issue for a motion.

19 Q. When you left Adante's house, who were you
20 with?

21 A. My adviser told me not to answer that question.

22 Q. All right. Well, I don't want to know anything
23 about what your attorney and you have discussed.

24 So you're saying that --

25 MR. PHILLIPS: I am instructing him not to answer

1 the question.

2 MR. BLECHMAN:

3 Q. So the question is -- let's back up a second.

4 When you left the house, you got into what car when
5 you left Adante's house?

6 A. Nissan.

7 Q. Is this your Nissan?

8 A. Yes.

9 Q. Is this a Nissan -- do you know what type of
10 Nissan this was?

11 A. I am not for sure. It was like a Sierra or
12 something.

13 Q. When you left the house did you leave with --
14 did you leave with anybody else other than your
15 attorney?

16 A. My counsel advised me not to answer that
17 question.

18 MR. PHILLIPS: You can answer that question.

19 THE WITNESS: Yes.

20 MR. BLECHMAN:

21 Q. How many people were you with?

22 A. One.

23 Q. So there was one other person in the car with
24 you at the time when you realized there was an officer
25 behind you trying to stop your vehicle?

1 A. Yes.

2 Q. And you're not going to disclose the identity
3 of that person?

4 MR. PHILLIPS: Correct.

5 MR. BLECHMAN: Okay. Well, to the extent that that
6 person may be a witness to some of the events in this
7 case, and plaintiff is choosing not to identify that
8 person for somewhat of an uncommon reason as of yet, and
9 maybe Counsel wants to extrapolate on his objection, but
10 I believe that's also an issue that is subject to
11 discovery.

12 And we're entitled to that information and we will
13 be putting that in a motion to compel seeking sanctions
14 again if need be if we can't resolve that issue
15 further.

16 Is your objection, Counsel -- why don't you state
17 for the record what your objection is with regard to
18 that information.

19 MR. PHILLIPS: It's potentially incriminating.

20 MR. BLECHMAN: Well, how is it incriminating to
21 your client? That's my question. It might be
22 incriminating to the other person in the car who ran
23 from the police, but how is it incriminating to your
24 client?

25 MR. PHILLIPS: You know what, I mean, that's just

1 the objection. That's the objection. And not to
2 mention that the guy didn't see any of this stuff that
3 he's actually -- he is admitting -- he has admitted
4 multiple things that he's done wrong already.

5 He's admitted that, you know, Officer Brady tried
6 to stop him and he drove off. He admitted that he had
7 jumped out of his car and he tried to run.

8 I mean, he's admitted -- or he did run. He's
9 admitted all of these things, okay. So there is nothing
10 -- I don't even think there's -- I don't even really
11 think there's a dispute as far as I know of as to what
12 happened prior to Officer Caine coming on the scene.

13 So, you know, there's no need to bring this guy in
14 or anybody else in to testify as to what happened prior
15 to Officer Caine coming.

16 Now, if this guy was there when Officer Caine came
17 in and allegedly did what my client says he did, now
18 that's one thing. But he wasn't there. The guy ran off
19 which you know because you probably saw him run off.

20 OFFICER BRADY: It's very common for suspects to
21 return to the scene to see what happened after they run,
22 though. And I know that from personal experience. So
23 for you to say that --

24 MR. BLECHMAN: Okay. I appreciate that.

25 And that's my point too is, you know, how do I know

1 that this guy didn't hide in the bushes and witness some
2 of this and all the sudden I am going to get sand bagged
3 at trial with the identification of this person who's
4 going to testify against my client.

5 I don't know that. I am certainly entitled to any
6 information that may lead to the discovery of admissible
7 evidence. This is certainly within that realm, well
8 within that realm. You're instructing him to not answer
9 a question about an incriminating issue that doesn't
10 even relate to him. It relates to the incrimination
11 perhaps of the person who ran.

12 And so that would not be the privilege of your
13 client. It would be the privilege of the person who
14 ran. And that certainly is an issue for my motion and I
15 think when we add all these up, sanctions, I think, are
16 going to be awarded here for these unreasonable
17 objections.

18 MR. PHILLIPS: I think maybe, you know, if we were
19 to speculate that it's a possibility that he hid in the
20 bushes and he was watching this happening from around
21 the corner, and then you think that I am going to bring
22 him in as some rebuttal witness and surprise you, I
23 mean, I could -- you drop the question and I will
24 stipulate not to bring him.

25 MR. BLECHMAN: Well, that's one of my concerns.

1 The other issue is maybe he's a favorable witness to us.
2 I don't know. So maybe I want to call him.

3 So the fact that you're not willing to identify
4 this other person who was in the car that fled, I
5 believe that's totally within the realm of discoverable
6 evidence.

7 I am going to reserve my right to ask Mr. Bracko
8 further questions after we file a motion on that issue,
9 and then I guess we can move on. I think the record is
10 clear on that.

11 Q. This Nissan car, was it your car?

12 A. Yes.

13 Q. And you again you did not have a driver's
14 license at the time you were driving this car,
15 correct?

16 A. No.

17 Q. What I said was correct?

18 A. Yes.

19 Q. And was your car legally registered?

20 A. No.

21 Q. Okay. So when my officer says that he saw your
22 vehicle and it didn't have a valid registration, that
23 would be accurate, correct?

24 A. Yes.

25 Q. So if the officer saw that you had no

1 registration, he had grounds to try to stop your
2 vehicle, correct?

3 A. Yes.

4 Q. Okay. Was the other person in the car a male
5 or female?

6 A. Male.

7 Q. The other person in the car, have you seen that
8 person since the day of this incident?

9 A. Yes.

10 Q. When's the last time you talked to that
11 person?

12 A. Three weeks ago.

13 Q. Have you guys ever talked about -- well, have
14 you ever talked to him about what happened in relation
15 to your arrest, you know, the handcuffing and that type
16 of thing?

17 A. Yes.

18 Q. Did he ever indicate that he witnessed any of
19 that?

20 A. No.

21 Q. After this person fled do you know essentially
22 where that person went, without identifying maybe the
23 exact location, but do you know if the person ran out of
24 the area?

25 A. No.

1 all accurate so far?

2 A. Yes.

3 Q. Okay. What I want to know is you said you turn
4 into the community center.

5 A. Uh-huh. I turned into Parchester and he hit
6 the lights and then I turned into the community center
7 parking lot.

8 Q. Okay. So you're saying you turned into the
9 Parchester Village area?

10 A. Yes.

11 Q. And then the community center is within the
12 Parchester Village area?

13 A. Right. Right after I made the left.

14 Q. So you turn into the village and is that when
15 you see the lights get turned on?

16 A. Yeah, when I was turning in -- when I was
17 making the turn, he hit the lights. So I turned in the
18 community center to pull over.

19 Q. So your intent when you drove into the
20 community center parking lot was you were going to stop
21 your vehicle?

22 A. I stopped.

23 Q. Okay. What happened after you stopped?

24 A. I pulled out.

25 Q. And you were trying to flee from the officer?

1 A. Yes.

2 Q. You understood that when there's a police
3 officer behind you with their lights on, that the police
4 officer was trying to stop your vehicle like a traffic
5 stop?

6 A. Yes.

7 Q. And you stopped your vehicle briefly and then
8 decided to try to flee by driving away. Is that
9 accurate so far?

10 A. Yes.

11 Q. Why was it that you did not stop your vehicle?

12 MR. PHILLIPS: Objection. Incriminating.

13 Do not answer.

14 MR. BLECHMAN: Certify that portion of the
15 deposition. I'd appreciate it.

16 Q. So what happened next? You drive off -- how
17 long were you stopped before you drove off?

18 A. A few seconds, a few minutes.

19 Q. Was it a few seconds or a few minutes?

20 A. Like a few seconds.

21 Q. Okay. And after you drove off, then what
22 happened?

23 A. I pulled out and went down Johnson.

24 Q. And why was it that you were going towards
25 Johnson or down Johnson? Was there any specific reason

1 out?

2 A. Yeah.

3 Q. Did the car hit anything?

4 A. No.

5 Q. Didn't the car end up like on someone's front
6 yard?

7 A. On the curb.

8 Q. So it was still partially on the street?

9 A. Yes.

10 Q. And partially on the curb?

11 A. Yes.

12 Q. Was any part of the car on grass?

13 A. No.

14 Q. Did the car hit any sort of utility poles?

15 A. No.

16 Q. After you spun out what happened next?

17 A. Got out and ran.

18 Q. You know at the time that you got out and ran,
19 that there was a police officer that was trying to stop
20 you from fleeing, correct?

21 A. Yes.

22 Q. Now, why was it that you got out of your car
23 and ran?

24 MR. PHILLIPS: Objection. Don't answer that. The
25 incriminating thing again.

1 MR. BLECHMAN: Okay. Well, I think it's a fair
2 question. I think it's relevant. And I am going to ask
3 that that portion of the record also be certified for
4 the purposes of a follow-up motion, with seeking
5 sanctions for having to do that.

6 Q. So you lose control of the car, you get out and
7 then you run on foot, correct?

8 A. Yes.

9 Q. The other individual in the car, did they also
10 flee on foot?

11 A. Yes.

12 Q. All right. And what happened next after you
13 start running? Where did you go?

14 A. I was running one way and he pulled on the side
15 of me and I turned around and started running up towards
16 Johnson.

17 Q. When you say he pulled on the side of you, who
18 are you talking about?

19 A. The officer to my left.

20 Q. Okay. So the officer to your left, Officer
21 Brady?

22 A. Yes, Officer Brady.

23 Q. Now, you see that Officer Brady is here and you
24 see on his uniform it says R. Brady.

25 Do you see that?

1 Q. Now, at the time -- up until the time that you
2 started your foot -- when you started running on foot,
3 okay, from the officer, up until the point when the
4 officer grabbed you on the fence, did you ever hear the
5 officer give you any sort of orders?

6 A. Yes.

7 Q. Okay. If could you speak up a little bit.

8 A. Yes.

9 Q. But what did you hear the officer say?

10 A. He said freeze.

11 Q. Okay. Did he say anything else other than
12 freeze?

13 A. That's it.

14 Q. How many times did he say that approximately?

15 A. I think twice.

16 Q. And did you ignore those commands?

17 A. Yes.

18 Q. Okay. So the officer grabs you and tries to
19 pull you off the fence and your jacket comes off,
20 correct?

21 A. Yes.

22 Q. All right. And are you still on the fence at
23 that point in time?

24 A. No.

25 Q. Did you fall to the ground at that point in

1 time?

2 A. He grabbed me off the fence and then he grabbed
3 me by my jacket and I came out of the jacket.

4 Q. So are you now back on the ground?

5 A. No. I am still standing up.

6 Q. Okay. You're standing up, but you're now off
7 the fence?

8 A. Yes.

9 Q. Okay. And then what happened next after you
10 came out of your jacket?

11 A. I ran, and he hit me in the leg with the
12 baton.

13 Q. So where did you try to run to?

14 A. Back down Johnson.

15 Q. How many steps did you get after the jacket
16 came off until the point in time when you got hit by the
17 officer?

18 A. I am not for sure.

19 Q. Can you give me an estimate? Do you think it
20 was, you know, you took a couple steps or you ran, you
21 know, for a minute. You know, give me an idea of what
22 happened?

23 A. A couple steps.

24 Q. So you took a couple steps and then you got hit
25 by the officer?

1 A. Yes.

2 Q. What part of his body or whatnot hit you at
3 that point in time?

4 A. His night stick hit me in the leg.

5 Q. Like a baton?

6 A. Yeah, baton hit me in the leg.

7 Q. Which leg?

8 A. I am not for sure. I think it was my left
9 leg.

10 Q. How many times did you get hit with the baton
11 at that point in time? Was it just once or was it more
12 than --

13 A. Just once.

14 Q. Okay. After you got hit by the baton what
15 happened next?

16 A. I fell.

17 Q. You were on the ground then?

18 A. Yes.

19 Q. Okay. Were you on your stomach. On your side?
20 On your back?

21 A. On my back.

22 Q. What happened next?

23 A. Got up.

24 Q. Right. Then what?

25 A. I started running again.

1 Q. So you were again trying to flee from the
2 officer?

3 A. Yes.

4 Q. Was the officer giving you any further commands
5 during this period of time?

6 A. No.

7 Q. Did he say anything to you after you came out
8 of your jacket and took a few steps before you were hit
9 by the baton?

10 A. No.

11 Q. Did he say anything to you after he hit you
12 with the baton?

13 A. No.

14 Q. And again, there's only one officer with you at
15 the time this is happening?

16 A. Yes.

17 Q. Did you ever hear him, the officer say anything
18 into his radio during this period of time?

19 A. No.

20 Q. Okay. So you try run away again. What happens
21 next?

22 A. He hit me in the leg again with the baton.

23 Q. Was it the same leg?

24 A. I am not for sure. I am not for sure.

25 Q. Okay. Just once again in the leg?

1 A. Uh-huh.

2 Q. How many steps did you get after you tried to
3 run again until you got this baton hit for the second
4 time?

5 A. The same as the last time. A couple.

6 Q. A couple more steps?

7 A. Yeah.

8 Q. Okay. And after you get hit that second time
9 with the baton, what happens next?

10 A. I fell in the street.

11 Q. Okay. And then when you fell in the street
12 tell me the position of your body. Are you on your
13 stomach, your side, your back?

14 A. On my stomach.

15 Q. Okay. What happened next?

16 A. He hopped on my back and he handcuffed me.

17 Q. So you said Officer Brady hopped on your back
18 and handcuffed you?

19 A. Yes.

20 Q. And when you said he hopped on your back, what
21 do you mean by that?

22 A. What he supposed to do on my back?

23 MR. PHILLIPS: Move to strike that.

24 You don't know what he was supposed to do. You're
25 not a cop. So just answer his question.

1 Brady, meaning you initiate any contact punching him,
2 grabbing him, anything like that?

3 A. No.

4 Q. Do you recall ever hearing Officer Brady tell
5 you to stay on the ground or get on the ground?

6 A. Yes.

7 Q. When did you hear him say that?

8 A. When he put his knee in my back.

9 Q. Was that the first time he told you to stay on
10 the ground?

11 A. Yeah.

12 Q. Did he ever tell you to get on the ground,
13 meaning you were not on the ground and he wanted you to
14 be on the ground. Did you ever hear him say that?

15 A. No.

16 Q. Did you ever approach Officer Brady with your
17 fists raised?

18 A. No.

19 Q. Did you ever approach Officer Brady with your
20 fists clenched?

21 A. No.

22 Q. Did you ever try to push Officer Brady to the
23 ground?

24 A. No.

25 Q. Did you ever try to -- once you were on the

1 ground I understand you got up from the ground a couple
2 times and tried to run again, correct?

3 A. Yes.

4 Q. And during those times did the officer give you
5 any orders for you to stay on the ground and not get up?
6 Did you ever hear him say that while you were on the
7 ground?

8 A. Once when he had his knee in my back.

9 Q. Before that point in time did he ever tell you
10 to stay on the ground, but instead of doing that you got
11 up and tried to run away?

12 A. No.

13 MR. PHILLIPS: Can I interject something.

14 If you don't remember something too, you can say
15 you don't remember. So I mean I don't know whether he
16 said it or not, but if you don't remember something, you
17 can say that. You don't have to say no if no means I
18 don't remember.

19 MR. BLECHMAN:

20 Q. At the time you were on the ground on your
21 stomach just before you were going to be handcuffed, was
22 there ever a period of time when you had your hands
23 under your body near your waistline area?

24 A. No.

25 Q. Was there ever a time when you heard an officer

1 Q. Have you ever been convicted of a felony?

2 A. Yes.

3 Q. How many?

4 A. One.

5 Q. What felony was that?

6 A. I am not for sure what the felony was.

7 Q. You might not know the exact code section of
8 the Penal Code or whatnot, but what was the crime?

9 A. I am not for sure.

10 Q. Mr. Bracko, I have tried to be as patient as I
11 can with you here today, and I am a pretty reasonable
12 person but, you know, I don't believe you're being very
13 forthright with me today. I don't think you're telling
14 me everything you do know. And I am entitled to know
15 most of the things I'm asking about here and whatnot.

16 I find it hard to believe that you were convicted
17 of a felony and you're sitting here telling me you don't
18 know what you got convicted for. So I am giving you
19 another opportunity here to provide me with that
20 information or, you know, the record will reflect what
21 your response is and we'll use it accordingly later on.

22 So I will ask you again, do you know what the prior
23 felony you were convicted of was for?

24 A. Evading the police.

25 Q. Which department or which city were you in when

1 you were evading the police?

2 A. In Richmond. I was in Richmond when I was
3 evading.

4 Q. Was that before or after our incident?

5 A. This was -- this was the incident.

6 Q. So you're saying -- you believe the felony
7 conviction for evading was arising out of this incident
8 where you were arrested by Officer Brady and Officer
9 Caine?

10 A. Yes.

11 Q. Okay. Any other felonies you believe you have
12 been convicted of?

13 A. No.

14 Q. Have you ever been convicted of evading the
15 police prior to the time of this incident?

16 A. Yes.

17 Q. Who were you running from at that time?

18 A. Fairfield Police.

19 Q. And when was that? Approximately?

20 A. I am not for sure.

21 Q. You might not be sure about the date, but when
22 approximately did that incident occur we'll just say.
23 When was that it you were running from the Fairfield
24 Police?

25 A. The year?

1 ingest any illegal drugs?

2 A. No.

3 Q. You should have just said that earlier. We
4 would have been able to move past that issue.

5 All right. Now, moving to the day of the incident,
6 you're aware that there was marijuana found in the
7 Nissan you were driving, correct?

8 A. Yes.

9 Q. And was that your marijuana?

10 A. Yes.

11 Q. And where was it found in the car, do you
12 know?

13 A. No.

14 Q. And there was also marijuana found in the
15 jacket you were wearing at the time of the incident,
16 correct?

17 A. Yes.

18 Q. And that was your marijuana?

19 A. Yes.

20 Q. Can you give me an estimate of how much
21 marijuana was found that was yours that night or that
22 day?

23 A. About three bags.

24 Q. From reading the police reports I saw there was
25 approximately 76 to 77 grams of marijuana found. Does

1 that sound about right?

2 A. Yes.

3 Q. And I understand that they were found in four
4 different bags. One bag had 29 grams, another bag had
5 29 grams and another bag had about 11 grams, another bag
6 had about seven grams.

7 Does that sound about right?

8 A. Yes.

9 Q. And that was all your marijuana, correct?

10 A. Yes.

11 Q. And what were you going to do with that
12 marijuana?

13 MR. PHILLIPS: Objection.

14 Do not answer that question. Incriminating.

15 MR. BLECHMAN:

16 Q. Do you remember what you told police you were
17 going to do with that marijuana?

18 A. No.

19 Q. Did you make any statements to any of the
20 officers after you were handcuffed about what you were
21 going to do with that marijuana?

22 A. No.

23 Q. Did the officers ever ask you if this was your
24 marijuana and that you were going -- asked you if you
25 were going to sell the marijuana?

1 A. No.

2 Q. Do you remember telling Officer Brady that that
3 marijuana was for personal use?

4 A. No.

5 Q. Do you smoke marijuana?

6 A. No.

7 Q. Have you ever smoked marijuana?

8 A. Yes.

9 Q. When's the last time you smoked marijuana?

10 A. Probably like --

11 MR. PHILLIPS: You know what, don't answer these
12 questions. You have answered whether you were on drugs
13 that day or using drugs that day and that's -- but as
14 far as whether or not he's used illegal drugs on a
15 different day, that's not --

16 MR. BLECHMAN: I think it's a fair question. He's
17 made an admission in the police reports about personal
18 use and I am entitled to inquire into that I believe.

19 MR. PHILLIPS: Right. I --

20 MR. BLECHMAN:

21 Q. Let me back up then. I think I asked you if
22 you use marijuana currently and you said no; is that
23 correct?

24 A. Yes.

25 Q. Okay. In the police report there's an

1 indication that you told Officer Brady that this 76 to
2 77 grams of marijuana was yours for personal use. Okay.

3 So I know if you don't use it now, my question is,
4 and I think it's a fair question, is when were you --
5 when in your life were you using marijuana?

6 MR. PHILLIPS: Objection. Don't answer the
7 question for the same reason. I mean -- I don't know.
8 I mean, I don't know.

9 You wanted to ask questions about whether he had
10 drugs on him that day. You asked him the question. You
11 wanted to ask questions about whether he was using that
12 day.

13 He's answered the question. I mean, I think you
14 have enough. And maybe it's not my decision to make
15 for you, but I think you have enough information about
16 that.

17 MR. BLECHMAN: From my perspective this is another
18 example of obstructionist behavior here, Counsel, in
19 terms of preventing me from asking legitimate questions
20 to your client, in the process essentially coaching your
21 client on responses or setting up a meeting in the hall
22 with your client about, you know, a subject that's going
23 to come up here and, you know, I am a little frustrated
24 frankly. And that's certainly going to be part of my
25 motion. It's a fair question.

1 And if you don't want to have your client respond,
2 that's fine. This will all be in my motion and I am
3 confident that we are going to get some sanctions for
4 this behavior.

5 So we can move on.

6 MR. PHILLIPS: You got your answers, Noah.

7 MR. BLECHMAN: Well --

8 MR. PHILLIPS: It took you a while to get them --

9 MR. BLECHMAN: I have gotten some answers, but it
10 hasn't been without pulling some teeth.

11 MR. PHILLIPS: It may have taken you a while to get
12 them, but you have gotten answers, so I don't know what
13 sanctions you're talking about. You have gotten the
14 answers.

15 MR. BLECHMAN:

16 Q. I am going to ask a couple more questions on
17 this area.

18 Where did you get that marijuana?

19 MR. PHILLIPS: Objection.

20 Don't answer that question. It's incriminating.

21 MR. BLECHMAN: Okay. Well, I disagree and I am
22 going to want that portion of the transcript marked and
23 probably some more of this portion of the transcript
24 marked.

25 Q. Do you know what a cannabis card is?

1 A. Yes.

2 Q. Have you ever owned a cannabis card?

3 A. Yes.

4 Q. When did you own a cannabis card?

5 A. 2000 to about '07.

6 Q. So for about seven years you had a cannabis
7 card?

8 A. Yes.

9 Q. How did you obtain that card?

10 A. From my mother.

11 Q. How did you obtain it via your mother?

12 A. I was a caregiver.

13 Q. Your mother needs a caregiver?

14 A. Yes.

15 Q. For what?

16 A. To pick it up for her.

17 Q. She smokes marijuana for medicinal purposes,
18 for medicine purposes?

19 A. Yes.

20 Q. For what problem?

21 A. I am not for sure what her problem is.

22 Q. And so you had a caregiver card?

23 A. Yes.

24 Q. Which means you can go to the club, you can
25 purchase marijuana for somebody and take it to them

1 essentially?

2 A. Yes.

3 Q. And did you do that from 2000 to 2007?

4 A. Sometimes, yes.

5 Q. Did you ever buy cannabis at the cannabis club
6 for your own purposes?

7 A. No.

8 Q. Every time you bought marijuana at the cannabis
9 club you would deliver that to your mom?

10 A. Yes.

11 Q. You don't know if your mom has any health
12 condition that she needs to use marijuana?

13 A. Not for sure.

14 Q. Do you know if she uses marijuana?

15 A. Yes.

16 (Cell phone ringing.)

17 MR. BLECHMAN:

18 Q. The marijuana that you had with you on the
19 night of the incident, was that purchased at a cannabis
20 club with a cannabis card or a caregiver card?

21 A. Yes.

22 Q. And which club was that?

23 A. Hilltop.

24 Q. Is that in Richmond?

25 A. Yes.

1 Q. Was that purchased at or around the time of the
2 incident?

3 A. Yes. A little bit before the incident.

4 Q. Like a little bit before, are we talking about
5 earlier that day? Are we talking about --

6 A. Earlier that day.

7 Q. Earlier that day. And how much did it cost to
8 purchase that?

9 A. Six hundred.

10 Q. And you were going to -- what time did you
11 purchase it that day?

12 A. I am not for sure what time I purchased it.

13 Q. And you were going to deliver all that
14 marijuana to your mom?

15 A. Yes.

16 Q. Why is it that you no longer have a cannabis
17 card?

18 MR. PHILLIPS: You know what, I'm sorry, we're done
19 with the marijuana questions.

20 MR. BLECHMAN: What's your objection, Counsel?

21 MR. PHILLIPS: Because he's going to put himself --
22 you're asking him a bunch of incriminating questions.
23 And you got a lot of information and, you know what, the
24 judge might say I am wrong, but on this one the judge is
25 just going to have to say I'm wrong.

1 MR. BLECHMAN: Counsel, it's not my problem that
2 your client may have done some things that are
3 incriminating. But if they relate to issues in this
4 case that I am defending on behalf of Officer Caine and
5 the city of San Pablo and the police department, I am
6 entitled to that information.

7 MR. PHILLIPS: Like I said before, I am not saying
8 that it is not relevant, you know, maybe not everything
9 you're asking, but I am not saying that it doesn't have
10 any relevance whatsoever.

11 I am simply saying that literally the marijuana
12 stuff is done. I mean, if you want to go to the judge
13 and try to get an order saying he has to answer all this
14 stuff, then you're going to have to do that.

15 I mean, he's given you what you need to know. He's
16 told you where it came from. You didn't even need to
17 know that, but he's told you where it came from.

18 He's admitted that he had it. You know, he's not
19 doing anything else.

20 MR. BLECHMAN: Well, I disagree and I think I am
21 entitled to ask any of these questions and --

22 MR. PHILLIPS: I don't think you understand --

23 MR. BLECHMAN: Hold on. Hold on. -- any of these
24 questions and even go further into some of these issues
25 that do relate to issues in this case.

1 So I am going to have to do a motion on those
2 issues it looks like also.

3 Q. The \$600 that you paid for the marijuana, whose
4 money was that?

5 MR. PHILLIPS: We are done with the marijuana
6 questions. I mean, literally for the same reason you're
7 asking incriminating questions.

8 Don't answer the question.

9 MR. BLECHMAN: Again, they may be incriminating to
10 your client in a sense because it's potential criminal
11 behavior, but that's not my concern. I am entitled to
12 relevant information or information that may lead to the
13 discovery of admissible evidence. I am asking those
14 specific questions.

15 Counsel, opposing counsel is not allowing his
16 client to answer basic questions that deal with these
17 issues in this case, relevant questions, and so I am
18 going to have to file a motion and seek sanctions to ask
19 these basic questions.

20 MR. PHILLIPS: You're going to have to seek
21 sanctions.

22 MR. BLECHMAN: And I am going to reserve my right
23 to go over all of these questions again and to seek a
24 motion to reask a lot of these questions because there's
25 been several points in this deposition that you have

1 either allowed your client to answer these questions or
2 disallowed him to answer these questions, and it's
3 really disrupted my line of questioning of the witness.
4 So I am going to ask the court to revisit these areas in
5 total if need be.

6 Q. At the time of the incident how much did you
7 weigh approximately?

8 A. Like 180.

9 Q. And how tall are you?

10 A. Six-foot.

11 Q. And are you about the same size now in terms of
12 weight as you were on the date of the incident?

13 A. Two hundred. Over 200 now.

14 Q. You weigh 200 now. Okay. Parchester Village,
15 is that an area -- is there violence in that area as far
16 as you know?

17 A. There's violence throughout the whole
18 Richmond.

19 Q. Specifically Parchester Village, are you aware
20 of whether or not there's some violence that occurs
21 there from time to time?

22 A. Yes.

23 Q. Yes, you are aware that there's violence
24 there?

25 A. Yes. All over Richmond, yes.

1 A. No.

2 Q. What about when you were living at the Warren
3 Avenue house, did you have to pay any rent?

4 A. No.

5 Q. Prior to Meyers Gardening Service, where did
6 you work?

7 A. That's it. Just the Meyers Gardening
8 Service.

9 Q. Since you graduated from high school in what,
10 about 2000?

11 A. Yeah.

12 Q. Okay. What did you do from 2000 to 2004 for
13 work purposes?

14 A. My family helped me.

15 MR. PHILLIPS: That's not what he asked you.

16 MR. BLECHMAN:

17 Q. I will ask it a better way.

18 Did you work from 2000 up until you got the job
19 with Meyers in 2004?

20 A. I didn't work until 2004.

21 Q. Okay. So since you graduated from high school
22 you have only worked about a year over the last eight
23 years, and that year was with Meyers Gardening Service;
24 is that correct?

25 A. Yes.

1 A. No.

2 Q. Whose number is 510-938-6975? Do you know who
3 that person is?

4 A. No.

5 Q. Do you remember getting a text message on your
6 phone that read quote, "Call me, fool. I need some
7 weed" and it's s-u-m weed?

8 MR. PHILLIPS: Objection.

9 Don't answer that question.

10 MR. BLECHMAN:

11 Q. Do you remember getting a text message on your
12 phone about that?

13 MR. PHILLIPS: Objection. Don't answer that
14 question.

15 MR. BLECHMAN: Why is that? What's the objection?

16 It's incriminating to get a text message?

17 MR. PHILLIPS: No. It's incriminating to get
18 orders for home delivery of weed, Noah. That's why it's
19 incriminating.

20 Don't answer the question. Whatever. Don't answer
21 the question.

22 MR. BLECHMAN: Again, I think it's relevant
23 information and I am going to have to ask you about that
24 at another time apparently.

25 Q. That was your phone that was found on the night

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF CONTRA COSTA)

4 I, JULIE MAGGI VASTA, CSR, License No. C-2947, do
5 certify:

6 That CHRISTIAN J. BRACKO, the witness in the
7 foregoing deposition, was by me first duly sworn to
8 testify the truth, the whole truth and nothing but the
9 truth in the within-entitled cause;

10 That said deposition was reported at the time and
11 place therein stated by me, a Certified Shorthand

12 Reporter, and thereafter transcribed into typewriting;

13 I further certify that I am not interested in the
14 outcome of said action, nor connected with, nor related
15 to, any of the parties of said action or to their
16 respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 11th day of July, 2008

19 *Julie Maggi Vasta*
20 JULIE MAGGI VASTA, CSR, License C-2947
21
22
23
24
25

EXHIBIT D

MISTER PHILLIPS, SBN 228991
LAW OFFICE OF MISTER PHILLIPS
P.O. Box 1162
Pinole, CA 94564
Phone: (510) 672-3756
Fax: (510) 222-4198
mister_phillips@hotmail.com

Attorney for Plaintiff Christian J. Bracko

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHRISTIAN J. BRACKO,)	Case No.: 3:08-cv-00239-JL
)	
Plaintiff,)	SECOND AMENDED COMPLAINT:
)	EXCESSIVE FORCE
vs.)	
)	DEMAND FOR JURY TRIAL
ALEX CAINE; CITY OF SAN PABLO,)	
)	
CA; and DOES 1-10, inclusive,)	
)	
Defendants.)	

JURISDICTION

1. The Court has original jurisdiction under 28 U.S.C. Section 1331, because the civil action arises under 42 U.S.C. Section 1983. The Court has supplemental jurisdiction under 28 U.S.C. Section 1367, because it has original jurisdiction.

VENUE

2. Venue is proper under 28 U.S.C. Section 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in the district.

INTRADISTRICT ASSIGNMENT

3. This action should be assigned to the Oakland Division, because a substantial part of the events or omissions giving rise to the claim occurred in the adjoining county of Contra Costa.

PARTIES

4. At all times relevant to this complaint, Plaintiff Christian J. Bracko was a black male.

5. At all times relevant to this complaint, Defendant City of San Pablo (the City) was a municipal corporation in the State of California.

6. At all times relevant to this complaint, Defendant Alex Caine was a white police officer for the City acting under the color of law. Mr. Bracko now sues Mr. Caine in his individual capacity only.

7. Mr. Bracko is ignorant of the true names and capacities of Defendants Does 1-10, inclusive, and therefore sues them by such fictitious names. Mr. Bracko is informed and believes that Does 1-10, inclusive, are responsible in some manner for the damages he suffered as set forth herein. Mr. Bracko will amend this complaint to state the true names and capacities of Does 1-10, inclusive, when he ascertains them.

FACTS

8. On or around November 27, 2006, around noon, an unknown police officer for the City tried to pull Mr. Bracko over in Parchester Village, a predominately black neighborhood in Richmond, CA. Mr. Bracko fled by car and then on foot in the same neighborhood.

1 9. The officer caught Mr. Bracko, wrestled him onto his
2 stomach, and handcuffed his hands behind his back. Mr. Bracko
3 laid there peaceably with his head on the sidewalk and his body
4 on the street. The officer had Mr. Bracko under full control.

5 10. A few minutes later, another police officer for the
6 City, whom Mr. Bracko is informed and believes is Alex Caine,
7 ran from around the corner, jumped into the air, and crashed
8 down onto Mr. Bracko's head with his knee.

9 11. Mr. Bracko lost consciousness. He could have lost his
10 life. Due to the awkward position Mr. Bracko's head and body
11 were in, Mr. Caine could have easily broken Mr. Bracko's neck.

12 12. Mr. Caine pulled Mr. Bracko to his feet. Mr. Bracko
13 could not walk without assistance. On their way to the police
14 car, Mr. Caine dropped Mr. Bracko into the gutter like a piece
15 of trash.

16 13. Mr. Caine failed to use reasonable care to protect Mr.
17 Bracko from harm. Mr. Caine's actions were intentional. Mr.
18 Caine kneed Mr. Bracko in his head and dropped him into the
19 gutter because of his race and/or color. Mr. Caine acted with
20 oppression and/or malice.

21 14. Mr. Bracko is informed and believes that the San Pablo
22 Police Department (SPPD) has an official policy or longstanding
23 pattern, practice, or custom of using excessive force on people
24 of color. Mr. Caine was executing the SPPD's policy, pattern,
25 practice, or custom when he kneed Mr. Bracko in his head and
26 dropped him into the gutter.

27 15. As a result of the defendants' conduct, Mr. Bracko
28 suffered physical injuries, loss of consciousness, mental

1 anguish, and serious and/or severe emotional distress. Mr.
2 Bracko also incurred medical expenses.

3 **FIRST CLAIM UNDER 42 U.S.C. § 1983**

4 **(AGAINST ALL DEFENDANTS)**

5 16. Mr. Bracko incorporates by reference each and every
6 allegation contained in paragraphs 1 through 15 of this
7 complaint as though fully set forth herein. Mr. Caine violated
8 Mr. Bracko's Fourth Amendment right to be free from unreasonable
9 seizure by using excessive force on him. Mr. Caine was executing
10 the SPPD's policy, pattern, practice, or custom of using
11 excessive force on people of color when he violated Mr. Bracko's
12 rights.

13 **SECOND CLAIM FOR ASSAULT**

14 **(AGAINST MR. CAINE)**

15 17. Mr. Bracko incorporates by reference each and every
16 allegation contained in paragraphs 1 through 16 of this
17 complaint as though fully set forth herein. Mr. Caine assaulted
18 Mr. Bracko.

19 **THIRD CLAIM FOR BATTERY**

20 **(AGAINST MR. CAINE)**

21 18. Mr. Bracko incorporates by reference each and every
22 allegation contained in paragraphs 1 through 17 of this
23 complaint as though fully set forth herein. Mr. Caine committed
24 battery on Mr. Bracko.

25 **FOURTH CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

26 **(AGAINST MR. CAINE)**

27 19. Mr. Bracko incorporates by reference each and every
28 allegation contained in paragraphs 1 through 18 of this

1 complaint as though fully set forth herein. Mr. Caine's conduct
2 caused Mr. Bracko to suffer severe emotional distress.

3 **FIFTH CLAIM FOR NEGLIGENCE**

4 **(AGAINST MR. CAINE)**

5 20. Mr. Bracko incorporates by reference each and every
6 allegation contained in paragraphs 1 through 19 of this
7 complaint as though fully set forth herein. Mr. Bracko was
8 harmed by Mr. Caine's negligence.

9 **SIXTH CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

10 **(AGAINST MR. CAINE)**

11 21. Mr. Bracko incorporates by reference each and every
12 allegation contained in paragraphs 1 through 20 of this
13 complaint as though fully set forth herein. Mr. Caine's conduct
14 caused Mr. Bracko to suffer serious emotional distress.

15 **SEVENTH CLAIM FOR VIOLATION OF CA CIV. CODE § 51.7(a)**

16 **(AGAINST MR. CAINE)**

17 22. Mr. Bracko incorporates by reference each and every
18 allegation contained in paragraphs 1 through 21 of this
19 complaint as though fully set forth herein. Under CA Civil Code
20 Section 51.7(a), "All persons within the jurisdiction of this
21 state have the right to be free from any violence, or
22 intimidation by threat of violence, committed against their
23 persons or property ... on account of [race or color]." Mr. Caine
24 denied Mr. Bracko his rights under Section 51.7(a).

25 **EIGHTH CLAIM FOR VIOLATION OF CIV. CODE § 52.3(a)**

26 **(AGAINST MR. CAINE)**

27 23. Mr. Bracko incorporates by reference each and every
28 allegation contained in paragraphs 1 through 22 of this

1 complaint as though fully set forth herein. Under Civil Code
2 Section 52.3(a), "No governmental authority, or agent of a
3 governmental authority, or person acting on behalf of a
4 governmental authority, shall engage in a pattern or practice of
5 conduct by law enforcement officers that deprives any person of
6 rights, privileges, or immunities secured or protected by the
7 Constitution or laws of the United States or by the Constitution
8 or laws of California." Mr. Caine engaged in a pattern or
9 practice of conduct that deprived Mr. Bracko of his rights under
10 the Constitution or laws of the U.S. and/or CA.

11 **NINTH CLAIM UNDER CA GOV. CODE § 820(a)**

12 **(AGAINST MR. CAINE)**

13 24. Mr. Bracko incorporates by reference each and every
14 allegation contained in paragraphs 1 through 23 of this
15 complaint as though fully set forth herein. Under CA Government
16 Code Section 820(a), "Except as otherwise provided by statute
17 (including Section 820.2), a public employee is liable for
18 injury caused by his act or omission to the same extent as a
19 private person." Therefore, Mr. Caine is liable for the injuries
20 his acts or omissions caused Mr. Bracko.

21 **TENTH CLAIM UNDER CIV. CODE § 52.1(b)**

22 **(AGAINST MR. CAINE)**

23 25. Mr. Bracko incorporates by reference each and every
24 allegation contained in paragraphs 1 through 24 of this
25 complaint as though fully set forth herein. Under Civil Code
26 Section 52.1(b), "Any individual whose exercise or enjoyment of
27 rights secured by the Constitution or laws of the United States,
28 or of rights secured by the Constitution or laws of this state,

1 has been interfered with, or attempted to be interfered with, as
2 described in subdivision (a), may institute and prosecute in his
3 or her own name and on his or her own behalf a civil action for
4 damages, including, but not limited to, damages under Section
5 52, injunctive relief, and other appropriate equitable relief to
6 protect the peaceable exercise or enjoyment of the right or
7 rights secured." Mr. Caine has interfered with with Mr. Bracko's
8 exercise or enjoyment of rights secured by the Constitution or
9 laws of the U.S. and/or CA.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Mr. Bracko demands judgment against the
12 defendants jointly and severally as follows:

- 13 1. Compensatory damages according to proof;
- 14 2. Punitive damages according to proof;
- 15 3. A civil penalty of \$25,000 for each and every violation of
16 Civil Code Sections 51.7 and 52.1(b) pursuant to Section
17 52(b)(2);
- 18 4. Injunctive relief;
- 19 5. Attorney's fees;
- 20 6. Costs of suit; and
- 21 7. For such other relief as the Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Mr. Bracko does hereby demand a jury trial.

24 Dated March 30, 2008

Respectfully Submitted,

25 /s/ Mister Phillips
26 Mister Phillips
27 Attorney for Plaintiff
28 Christian J. Bracko

EXHIBIT E

<input type="checkbox"/> Other <input type="checkbox"/> Courtesy Report <input type="checkbox"/> Telephone Report <input type="checkbox"/> CPI <input checked="" type="checkbox"/> Prosecution Desired <input type="checkbox"/> No Prosecution Desired		Case 3:08-cv-0289-JAN Document 43 Filed 08/27/2008 Page 82 of 86		SAN PABLO POLICE DEPARTMENT 13880 San Pablo Avenue San Pablo, California 94806 (510) 215-3130		Case No. 06-32432 Page 1 of 4 Refer Other Reports:										
1 C R I M E	CODE SECTION 11359 H&S		CRIME Possession of controlled substance for sale		CLASSIFICATION 11359		PRIMARY 11360 H&S		OTHER 69 PC							
	LOCATION (Be Specific) 609 Collins Ave				DATE RPTD 11-27-06		OCCURRED ON/OR BETWEEN		DATE 11-27-06		DAY Mon		TIME 1244			
	FIRM NAME (At Location)				TIME RPTD 1244		AND		DATE		DAY		TIME			
2 I N V E S T I G A T I O N	CODE V		NAME (Last, First, Middle) State of California				OCCUPATION		D.O.B.		AGE S <input type="checkbox"/> 1M <input type="checkbox"/> 2F		R <input type="checkbox"/> WHI <input type="checkbox"/> BLK <input type="checkbox"/> OR <input type="checkbox"/> MEX <input type="checkbox"/> AI <input type="checkbox"/> OTHER			
	RES. ADDRESS				CITY				ZIP CODE				RES. PHONE			
	BUS. ADDRESS				CITY				ZIP CODE				BUS. PHONE			
	CODE		NAME (Last, First, Middle)				OCCUPATION		D.O.B.		AGE S <input type="checkbox"/> 1M <input type="checkbox"/> 2F		R <input type="checkbox"/> WHI <input type="checkbox"/> BLK <input type="checkbox"/> OR <input type="checkbox"/> MEX <input type="checkbox"/> AI <input type="checkbox"/> OTHER			
	RES. ADDRESS				CITY				ZIP CODE				RES. PHONE			
	BUS. ADDRESS				CITY				ZIP CODE				BUS. PHONE			
3 V E H I C L E	LICENSE NO.		STATE		YEAR		MAKE		BODY <input type="checkbox"/> 0 UNK <input type="checkbox"/> 2 4-DR <input type="checkbox"/> 4 P/U <input type="checkbox"/> 6 VAN <input type="checkbox"/> 8 RV <input type="checkbox"/> 10 OTHER STYLE <input type="checkbox"/> 1 2-DR <input type="checkbox"/> 3 CONV <input type="checkbox"/> 5 TRUCK <input type="checkbox"/> 7 S/W <input type="checkbox"/> 9 M/C							
	COLOR/COLOR		OTHER CHARACTERISTICS (i.e. T/C Damage, Unique Marks, Paint)						DISPOSITION OF VEHICLE							
4 P R O P E R T Y	ARTICLE NAME		QTY		IDENTIFICATION NUMBERS		BRAND/MAKE OR MANUFACTURER		MODEL NAME AND MODEL NUMBER		MISCELLANEOUS DESCRIPTION		VALUE			
5 N A R R A T I V E	Narrative begins on page 2															
6 CRIMES AGAINST ELDERLY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO AGE(S)				7 DOMESTIC VIOLENCE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				8 WEAPONS INVOLVED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				TYPE OF WEAPON		<input type="checkbox"/> 1 FIREARM <input type="checkbox"/> 2 KNIFE/ CUTTING INSTRUMENT <input type="checkbox"/> 3 OTHER DANGEROUS WEAPON <input type="checkbox"/> 4 PERSONAL WEAPON(HANDS, FEET, ECT)		
9 CASE STATUS <input checked="" type="checkbox"/> CLOSED <input type="checkbox"/> PENDING <input type="checkbox"/> SUSPENDED <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> F/U DATE <input type="checkbox"/> OTHER				COPIES TO: <input type="checkbox"/> CHIEF <input type="checkbox"/> DET <input type="checkbox"/> OTHER AGENCY <input type="checkbox"/> OTHER ROUTING <input type="checkbox"/> CAU <input checked="" type="checkbox"/> DA ENTERED BY:												
<input type="checkbox"/> CHECK IF SUSPECT REPORT IS ATTACHED <input checked="" type="checkbox"/> CHECK IF PROPERTY SHEET IS ATTACHED <input type="checkbox"/> CHECK IF MORE NAMES CONTINUATION																
REPORTING OFFICER Brady				ID# 1014		DATE 112706		REVIEWED BY m. 826		ASSIGNED TO OFFICER						

SAN PABLO POLICE DEPARTMENT

NARRATIVE REPORT

Page No.

2-7

Case No.

06-32432

On the listed date and time I was in a marked patrol vehicle, in full police uniform. I was traveling W/B on Miner Ave, near Giant Rd. I saw a white Nissan Sentra license # 3GXC299 traveling W/B Miner Ave approximately 100 feet ahead of me. I could see that the vehicle was occupied by 2 BMA's.

I got behind the vehicle as it crossed the train tracks on Giant Rd and began traveling N/B on Collins Dr. I could see that the registration on the vehicle was expired 3/06, by the license plate tabs. I confirmed that it was in fact expired by running the plate on my MDC. This is a violation of 4000a VC. I activated my overhead lights, attempting to conduct a traffic stop for the above violation. The vehicle pulled into the parking lot of 900 Collins Dr, which is on the corner of Williams Dr @ Collins Dr in Richmond. The vehicle made a U-turn in the parking lot and sped off over the curb, failing to yield to my over head lights. I notified dispatch that the vehicle failed to yield and I activated my siren. The vehicle drove W/B onto Williams drive and then made a northbound turn onto McGlothen Dr. The vehicle accelerated to approximately 35-40 MPH. The vehicle then made a W/B turn onto Johnson Dr from McGlothen Dr. Again the vehicle accelerated to approximately 40 MPH. At the dead end of Johnson Dr the vehicle made a N/B turn onto Leke Way. The roadway was wet and the driver lost control. The vehicle spun out and came to rest on the front lawn of 4001 Leke Way. Both occupants of the vehicle jumped out of the car and began to run N/B on Leke Way.

I focused my attention to the driver, who was running on the western curb line of Leke Way. He was wearing a blue jean jacket and blue jeans. The jean jacket was baggy and it covered his waist line. As I was catching up to him I saw him reach his hands for his waste band. I was unaware if he had a weapon or not. I pulled my patrol vehicle along side of the suspect, who was later identified as Christian Bracko via a hard copy of a CA ID. I stopped my patrol vehicle and got out. (S) Bracko turned around and began running S/B on Leke Way back toward Johnson Dr. I yelled for (S) Bracko to stop running and to get on the ground. (S) Bracko ignored my commands to get on the ground and continued to run. (S) Bracko made an E/B turn onto Johnson Dr from Leke Way and continued to run on the northern curb line. I yelled again for (S) Bracko to get on the ground, but he continued to run. (S) Bracko ran into the front yard of 609 Johnson Dr and ran to the east side of the house. He ran down the side of the house and to the fence. As he got to the fence I yelled at him to stop running and get on the ground. (S) Bracko ignored me and attempted to climb the fence. I grabbed (S) Bracko by the back of his jacket and pulled him off the fence. (S) Bracko fell to the ground. I told (S) Bracko to stay on the ground and put his hands behind his back. (S) Bracko ignored my commands, got back on his feet and started coming toward me. I yelled at (S) Bracko to get on the ground and to stop resisting. (S) Bracko ignored me and continued to approach me with his fists raised and clenched. I grabbed (S) Bracko by the jacket and tried to throw him on the ground. (S) Bracko resisted by grabbing my jacket and trying to push me to the ground. I continued to hold onto his jacket and (S) Bracko began to pull away. I told (S) Bracko again to stop resisting and get on the ground.

<input type="checkbox"/> CHECK IF SUSPECT REPORT IS ATTACHED	<input checked="" type="checkbox"/> CHECK IF PROP/EVID SHEET ATTACHED	<input type="checkbox"/> CHECK IF MORE NAMES IN CONTINUATION	CASE STATUS: <input checked="" type="checkbox"/> CLOSED <input type="checkbox"/> PENDING <input type="checkbox"/> F/U DATE <input type="checkbox"/> SUSPENDED <input type="checkbox"/> UNFOUNDED
COPIES TO: <input type="checkbox"/> CHIEF <input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> DET <input type="checkbox"/> OTHER AGENCY <input type="checkbox"/> OTHER ROUTING	ENTERED BY:		
REPORTING OFFICER: Brady	ID# 1014	DATE 11-27-07	REVIEWED BY: <i>MW</i>
	ID# 8710	DATE 11/27/06	ASSIGNED TO OFFICER

SAN PABLO POLICE DEPARTMENT

NARRATIVE REPORT

Page No.

3-4

Case No.

06-32432

(S) Bracko pulled his jacket and shirt off in an attempt to get away. I grabbed my collapsible baton and extended it. I told (S) Bracko again to get on the ground and stop resisting. (S) Bracko did not comply with my command. I struck (S) Bracko once on the left knee with my baton and told him to get on the ground. I grabbed him and pushed him to the ground. I told him to stay on the ground, but he pushed himself back up. I struck (S) Bracko with the but end of my baton on the right side of his rib cage and told him to get on the ground. (S) Bracko ignored me and got back to his feet. I struck (S) Bracko a second time with my extended baton on his left knee. (S) Bracko fell to the ground. I got on top of (S) Bracko and told him to stop resisting and lay flat on the ground. (S) Bracko pulled his hands into his body, near his waste line and tried to push himself back up. At this time I wrapped my left arm around (S) Bracko's head and placed him in a head lock.

At this time I heard Officer Caine advise over the radio that he had located my patrol vehicle. Approximately 10 seconds later I saw Officer Caine running Down Johnson Dr from Leke way, toward my location. As officer Caine arrived (S) Bracko was still resisting and trying to push himself back to his feet. Officer Caine pushed (S) Bracko's head to the ground and his body followed. I was able to gain control of (S) Bracko's right hand by pulling it out from underneath his body. Officer Caine assisted by pulling (S) Bracko's left hand out from under his body and he was placed in handcuffs.

I collected (S) Bracko's jacket and shirt from the front yard of 609 Johnson Dr, as it had been pulled off during the struggle. I located three large clear knot tied sandwich type baggies filled with a green leafy substance inside the jacket that (S) Bracko was wearing. I recognized this substance to be consistent with marijuana. Incident to arrest I also searched the vehicle that (S) Bracko was driving. I located another clear plastic sandwich type baggie filled with a green leafy substance in the driver side door pocket of the vehicle. I collected it as evidence. I located a black cell phone that was lying near the center consol of the vehicle, between the driver and passenger seat. The vehicle was towed and (S) Bracko was transported and booked into SPPD jail.

Once at the jail I took photographs of (S) Bracko's injuries. He suffered an abrasion to the left side of his face, a small laceration underneath his chin, complaint of pain to the jaw and to his left thumb.

I read (S) Bracko his Miranda rights and he told me he understood. He said he was running because the vehicle was not registered and he had a suspended license. He said he did not possess the marijuana for sale, it was for personal use. I asked (S) Bracko if he would sign a written statement. He said he would not.

<input type="checkbox"/> CHECK IF SUSPECT REPORT IS ATTACHED	<input checked="" type="checkbox"/> CHECK IF PROP/EVID SHEET ATTACHED	<input type="checkbox"/> CHECK IF MORE NAMES IN CONTINUATION	CASE STATUS: <input checked="" type="checkbox"/> CLOSED <input type="checkbox"/> PENDING <input type="checkbox"/> F/U DATE
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COPIES TO: <input type="checkbox"/> CHIEF <input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> DET <input type="checkbox"/> OTHER AGENCY	<input type="checkbox"/> OTHER ROUTING		ENTERED BY:
<input type="checkbox"/> DMV <input type="checkbox"/> CAU <input type="checkbox"/> ABC(2 COPIES) <input checked="" type="checkbox"/> DA			
REPORTING OFFICER: Brady	ID# 1014	DATE 11-27-06	REVIEWED BY: <i>Mr</i>
	ID# 876	DATE 11/27/06	ASSIGNED TO OFFICER

SAN PABLO POLICE DEPARTMENT

NARRATIVE REPORT

Page No.

4-4

Case No.

06-32432

I tested the green leafy substance located in (S) Bracko's jacket and in the vehicle, using a VALTOX test kit and a clean test try. The substance tested positive for marijuana. Two of the clear plastic knot tied bags had an AGW of 29.0 grams. The third bag had an AGW of 11.4 grams. The last bag had an AGW of 7.0 grams. I sent the listed items to the lab for analysis.

I went through the black cell phone that I located in the vehicle in an attempt to find the owner. While looking through the cell phone I noted a text message that was sent to the phone on 11-16-06 at 10:09 PM. The message was from 510-938-6975. The first part of the message read, "Call me fool I need sum weed...". I logged the cell phone as evidence.

I collected \$135 from (S) Bracko's R/F pants pocket in the following denominations: 6 \$20's and 3 \$5's. I logged the money as evidence.

(S) Bracko was transported to County hospital, where he was treated for his injuries. While x-rays of (S) Bracko's hand were being taken he asked me if I put his cell phone in his property or if I kept it as evidence. I told (S) Bracko that I was keeping his phone for evidence. Once (S) Bracko was cleared from the hospital he was transported and booked into MDF.

Based on the failure to yield, (S) Bracko fighting with police in an attempt to escape, the quantity of marijuana located, the money and the text message from the cell phone I believed that (S) Bracko possessed the marijuana with intent to sell it.

(S) Bracko was found to be on probation for evading police (2800.1 VC) and he was also driving on a suspended drivers license (14601.1 VC).

The total time of the pursuit was less than one minute, over a distance of .5 miles. I requested a copy of the dispatch tape as evidence.

Case closed, Route to DA for prosecution.

<input type="checkbox"/> CHECK IF SUSPECT REPORT IS ATTACHED	<input checked="" type="checkbox"/> CHECK IF PROP/EVID SHEET ATTACHED	<input type="checkbox"/> CHECK IF MORE NAMES IN CONTINUATION	CASE STATUS: <input checked="" type="checkbox"/> CLOSED <input type="checkbox"/> PENDING <input type="checkbox"/> F/U DATE
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COPIES TO: <input type="checkbox"/> CHIEF <input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> DET <input type="checkbox"/> OTHER AGENCY <input type="checkbox"/> OTHER ROUTING	ENTERED BY:		
<input type="checkbox"/> DMV <input type="checkbox"/> CAU <input type="checkbox"/> ABC(2 COPIES) <input checked="" type="checkbox"/> SDA			
REPORTING OFFICER: Brady	ID# 1014	DATE 11-27-06	REVIEWED BY: <i>MW</i>
	ID# <i>84</i>	DATE <i>11/27/06</i>	ASSIGNED TO OFFICER

EXHIBIT F

1 MISTER PHILLIPS, SBN 228991
2 **LAW OFFICE OF MISTER PHILLIPS**
3 P.O. Box 1162
4 Pinole, CA 94564
5 Phone: (510) 672-3756
6 Fax: (510) 222-4198
7 mister_phillips@hotmail.com

8 Attorney for Plaintiff Christian J. Bracko

9
10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**
14

15 CHRISTIAN J. BRACKO,) Case No.: 3:08-cv-00239-JL
16 Plaintiff,) **INITIAL DISCLOSURES**
17 vs.)
18 ALEX CAINE; CITY OF SAN PABLO,)
19 CA; and DOES 1-10, inclusive,)
20 Defendants.)
21

22 **1. Witnesses**

- 23 1. Police Officer Robert Brady saw Police Officer Alex Caine
24 jump on the plaintiff's head with his knee. Address and
25 telephone number unknown
26 2. Lorraine Hunt saw Police Officer Caine jump on the
27 plaintiff's head with his knee. Address and telephone
28 number unknown

1 4. Adontae Dotson saw Police Officer Caine jump on the
2 plaintiff's head with his knee. 200 BW Williams Dr,
3 Vallejo, CA 94589, (510) 827-5696

4 5. Medical professionals at Kaiser Permanente in Martinez, CA

5 **2. Documents**

6 Medical records at Kaiser Permanente in Martinez, CA

7 **3. Damages Computation**

Damages	Amount
Pain and suffering	\$125,000.00
Emotional distress	\$25,000.00
Medical expenses	\$5,000.00
Civil penalties	\$100,000.00
Punitive damages	\$2,500,000.00

14 **4. Insurance**

15 N/A

16 Dated: April 18, 2008

Respectfully Submitted,

17 /s/ Mister Phillips
18 Mister Phillips
19 Attorney for Plaintiff
20 Christian J. Bracko
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PROOF OF SERVICE

I am over 18 years of age. I am not a party to this civil action. My business mailing address is: Law Office of Mister Phillips, P.O. Box 1162, Pinole, CA 94564.

On the date below, I served "Intitital Disclosures" on the following individual(s) by first class mail:

Noah Blechman, Esq. McNamara Dodge LLP 1211 Newell Ave Walnut Creek, CA 94596-5331	
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I do hereby declare under penalty of perjury under the laws of the State of California that the foregoing information in this proof of service is true and correct.

Dated: April 18, 2008

Respectfully Submitted,



Mister Phillips
Attorney for Plaintiff

EXHIBIT G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

--oOo--

COPY

CHRISTIAN J. BRACKO,

Plaintiff,

vs.

No. C08-00239

ALEX CAINE; CITY OF SAN PABLO, CA;

and DOES 1 - 10, inclusive

Defendants.

DEPOSITION OF ASHLEE LEAH WILSON

Taken before JULIE MAGGI VASTA,

A Certified Shorthand Reporter,

License No. C-2947, State of California

July 14, 2008

--oOo--

McNamara, Dodge, Noy, Beatty,
Slattery & Pfalzer LLP

JUL 28 2008

HAND DELIVERED

1 Q. During that two or three minutes Bracko was not
2 -- Bracko was resisting the officer. Would you agree
3 with that?

4 A. I mean, I said I agree with that, you know.
5 But the third officer didn't have to do that to Bracko.

6 He could have just waited and see that he was
7 getting pulled up, that he already his hands cuffs, he
8 was already, you know, listening to the officers, the
9 two officers.

10 Q. Right. But before that, before the third
11 officer, during this two or three minute struggle,
12 Bracko is resisting that initial first officer,
13 correct?

14 A. For two to three minutes.

15 Q. He's resisting him for two or three minutes,
16 correct.

17 A. Yes.

18 Q. Have you ever talked with Mr. Phillips
19 before?

20 A. Yes.

21 Q. What have you guys talked about?

22 A. I told him what happened and he wrote it down
23 so -- that's it.

24 Q. Who else was around when you had this
25 conversation with Mr. Phillips?

1 A. My mother.

2 Q. And when did that happen when you had this
3 conversation and he was writing something down?

4 A. I forgot -- it was last year. But I just can't
5 remember the date and the month.

6 Q. But you know it was some time in 2007?

7 A. Yes. Correct.

8 Q. Did he ever have you sign that document?

9 A. Correct.

10 Q. And have you ever seen that signed document?

11 A. Correct.

12 Q. Did he give you a copy of it?

13 A. Yes.

14 Q. And that's different than what your mom wrote
15 in her handwriting after the incident, correct?

16 A. Me and my mother's story is totally different.

17 Q. How so?

18 A. It's similar, but it's different.

19 Q. How is it different?

20 A. Well, I seen everything that happened to
21 Bracko. She seen it, but she wasn't as close as I was.
22 That's the only thing about it.

23 Q. Now, the statement that you gave Mr. Phillips
24 and he wrote down and you signed it, was that something
25 that he typed up?

1 A. Huh?

2 Q. When you had this conversation with Mr.
3 Phillips who's the attorney sitting next to you, did he
4 type it up and then you sign it? Or was it something
5 handwritten and then you signed it?

6 A. It was type.

7 Q. It was typed?

8 A. Yes.

9 Q. And you have a copy of that at your house?

10 A. Yes.

11 Q. And did he type up something for your mom
12 also?

13 A. Yes.

14 Q. And did she sign that?

15 A. Yes. Anybody else get any statement typed up
16 by Mr. Phillips that you're aware of?

17 A. No.

18 Q. How about Dante?

19 A. I don't know because I don't talk to Dante like
20 that, so I don't know.

21 Q. How about Shaenedra?

22 A. No.

23 Q. After Christian got out of jail after this
24 incident, did you see him a couple days after this
25 incident?

1 Q. Have you ever read that?

2 A. No.

3 Q. Have you ever seen the legal document that was
4 filed by Christian's attorney that started this
5 lawsuit? Have you ever seen that? It's called a
6 complaint.

7 A. I don't think so.

8 Q. You mentioned earlier that you hand wrote that
9 statement and signed it and gave it to Mr. Phillips and
10 you have a copy of it.

11 Where is that at your house? Do you know where it
12 is?

13 A. No, because we moved, so I don't know the
14 place.

15 Q. If I were to call you up tomorrow and say,
16 Ashlee, can you find me those documents, are you able to
17 do that?

18 A. It's misplaced.

19 Q. Does your mom know where those are?

20 A. No, she doesn't.

21 Q. But at some point you had copies of the one
22 that you signed?

23 A. Yes, once upon a time.

24 MR. BLECHMAN: I think I am done.

25 I just want to state for the record that I have a

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF CONTRA COSTA)

4 I, JULIE MAGGI VASTA, CSR, License No. C-2947, do
5 certify:

6 That ASHLEE LEAH WILSON, the witness in the
7 foregoing deposition, was by me first duly sworn to
8 testify the truth, the whole truth and nothing but the
9 truth in the within-entitled cause;

10 That said deposition was reported at the time and
11 place therein stated by me, a Certified Shorthand
12 Reporter, and thereafter transcribed into typewriting;

13 I further certify that I am not interested in the
14 outcome of said action, nor connected with, nor related
15 to, any of the parties of said action or to their
16 respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 23rd day of July, 2008

19 *Julie Maggi Vasta*
20 JULIE MAGGI VASTA, CSR, License C-2947
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